

v.2906

No. 14201

United States
Court of Appeals

For the Ninth Circuit.

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CHET L. PARKER and LOIS M. PARKER,
Appellants,
vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEUS WINANS,
Appellees,

and

WALTER STEGMANN,
Appellant,
vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEUS WINANS,
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Transcript of Record

In Five Volumes

Volume III
(Pages 1023 to 1556)

Appeals from the United States District Court for the
District of Oregon

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(Testimony of Retlaw Haynes.)

Q. What was the name of the man you brought on that second trip? A. Kuns.

Q. Who went up to the property, actually up to the property, with you on the second trip?

A. Well, Paul Winans, I am quite sure his brother, Ross, was there, and Walter Stegmann.

Q. Was the other man whose name you couldn't recall on the 18th, was he present also on the 25th?

A. I don't remember that he was. I don't believe so.

Q. Then on the 25th, did your work continue for just one day, or did you go over, run into Sunday also? A. We worked Sunday also.

Q. On either of those two days, did you yourself have any direct conversation with Mr. Stegmann as to his interest, if any, in the property?

A. Well, I think you are stating that a little wrong. I didn't have direct conversation, but I couldn't help overhearing conversation between Mr. Stegmann and Mr. Winans pertaining to that.

Q. All right, did you overhear—or what conversation between Mr. Stegmann and Mr. Winans did you overhear on Saturday or Sunday, the 25th or 26th?

Mr. Jaureguy: Parkers object to it as far as they are concerned on the ground it is not binding upon them. [965]

The Court: Go ahead.

The Witness: Well, would you break that down a little bit, or just anything I heard is what you want?

(Testimony of Retlaw Haynes.)

The Court: Go ahead, tell us anything you heard.

A. Well, at dividing up those lake front lots was the thing I remember most clearly because Mr. Stegmann and Mr. Winans were having difficulty in agreement on how they were going to divide these lots up. Neither one had a good idea because just to start dividing lots up without having a plat worked up is pretty hard to tell, what shape, what area, they were in, and they were doing a lot of talking and arguing. I was getting kind of disgusted standing around waiting. I told them if they couldn't make up their minds maybe I had better take off because maybe they was wasting my time and maybe I was wasting theirs because they couldn't reach an agreement on how to divide these lots adjacent to the lake, on what method and so forth, what shape and so forth to make them.

Q. Was that on Sunday that that was?

A. That was Sunday towards the afternoon.

Q. After you told them or asked them whether or not you should take off, did you hear Mr. Stegmann or Mr. Winans say anything further about what they were going to do with reference to the survey?

A. Well, I believe they wanted me to come back the following week end, and I told them I couldn't, and Mr. Stegmann said he [966] knew someone he could get to complete the survey.

Q. Did he mention the man who he said he could get to complete the survey, by name?

A. Not that I remember.

(Testimony of Retlaw Haynes.)

Q. Did he say where he would be coming from?

A. Not that I recall.

Q. Did you overhear any other conversation between Mr. Stegmann and Mr. Winans in regard to completing the survey or when or how it was going to be done?

A. Well, I just can't remmeber the details on how I left there but it was that Mr. Stegmann would have this friend or someone he knew to complete the survey, and I would not return unless I was contacted.

Q. When was the next time that you had anything to do with the property or the survey following the 25th and 26th?

A. Well, Mr. Winans called me one Friday, I believe, the date—it was the first part of September, and he wanted me to come up and meet him and Mr. Stegmann at the City Engineer's office in Hood River.

Q. You met with them on the Saturday?

A. Saturday morning.

Q. Would that be about Saturday, September 8th?

A. Well, it could have been. It was the very first week or thereabouts in September.

Q. Now, on Saturday—or on that Saturday that you saw Mr. [967] Winans and Mr. Stegmann, did you hear any discussion between Mr. Stegmann and Mr. Winans relative to the title to the 40-acre tract which was adjacent, or to the Lot 1 that you had been doing the survey on?

(Testimony of Retlaw Haynes.)

A. Well, I can't recall that in the City Engineer's office there was any mention of that, but at one of the trips in the field, I can't remember which one it was, there was some mention of this property that the Government had claim to. It was supposed to have been school property. There was some mention of it, but what the train of thought was I can't recall.

Q. That was on one of the actual trips when you were on the property; is that right?

A. One of the trips when we were on the property there was some discussion of it, but my job was with a transit. I didn't retain exactly what was said, but I do remember it being talked about.

Q. Well, then, on this Saturday that you had met in the City Engineer's office, later in the afternoon you also met over in an attorney's office in Hood River; did you not? A. Yes.

Q. Do you recall the name of that attorney?

A. Vawter Parker.

Q. Did you hear any discussion between Mr. Stegmann and Mr. Winans relative to this title concerning the 40-acre tract while you were over there at Vawter Parker's office? [968]

A. Yes.

Q. State as best you can, in your own words, just what the discussion or conversation was that you heard?

A. Well, it was discussed about, that this forty, I believe, that the Government had a claim on and

(Testimony of Retlaw Haynes.)

that Winans and his father had had that property in the family for many years, and they had been paying taxes, and there had never been any trouble over it although it originally was supposed to have been school property, and Paul said it would take an Act of Congress to clear it up, and he said he actually had instigated just such a procedure. He said——

Q. Was there anything said that afternoon in Vawter Parker's office that you recall about Mr. Stegmann signing any agreement pertaining to the defect or Government claim against the property?

A. Yes, I didn't read it because I was sitting across the room, but I recall that Mr. Stegmann refused to sign the paper as it was presented.

Q. You say you did not read the document that was submitted to Mr. Stegmann, but was there anything said that, so that you knew what the document was about; in other words, what it concerned?

A. Well, he said something about admitting that the situation or something to that effect if he signed that, but it didn't register on me too much just as to the details of it.

The Court: Would you read that back? [969]

(Last answer read.)

The Court: Are you talking about what Mr. Stegmann said?

The Witness: Yes.

The Court: Mr. Stegmann refused to sign it because of what reason? You tell us again.

(Testimony of Retlaw Haynes.)

The Witness: What the reason was I didn't know because I didn't see the paper, but Mr. Stegmann said that if he signed that he would—it would be an admission of some knowledge that—I don't know just what it was at the time.

Q. (By Mr. Buell): Was anything said there on that Saturday at Vawter Parker's office or while you were over at the City Engineer's office earlier in the day as to who was the purchaser of the property?

A. Not directly, but I was under the impression——

Mr. Jaureguy: I want to object to that as a conclusion of the witness.

Mr. Buell: I think the witness' state of mind——

Mr. Jaureguy: I have already objected and I don't think I need to object again.

The Court: I do not think a witness' state of mind has anything to do with this case unless he was lead to believe that Stegmann was a purchaser by some affirmative representations that were made either by Stegmann or someone else in Stegmann's presence.

Mr. Jaureguy: If I may say so, I think that even then his [970] state of mind is not right, but it is as to what was said.

The Court: That is right.

Mr. Buell: I will get at it another way then.

Q. Mr. Haynes, have you ever known a man by the name of Chet L. Parker? A. No.

Q. Did you hear his name mentioned at any time

(Testimony of Retlaw Haynes.)

on the occasion of your first trip to the Lost Lake property, August 18th, or your next trip on August 25th or 26th, or on the occasion of your meetings there on Saturday at the City Engineer's office or attorney Parker's office?

A. I don't remember having heard that name until this case came up.

Q. Who was it that you first heard the name from? Who was the person that first called your attention to the name Chet L. Parker, and wanted to know whether or not you knew him or knew anything of him in connection with this Winans' transaction?

A. Mr. Winans' attorney, Mr. Lindsay.

Mr. Buell: I have no further questions. Thank you, Mr. Haynes.

Cross-Examination

By Mr. Jaureguy:

Q. Now, when you went up to Lost Lake from Hood River, did you go by the Winans place?

A. Yes. [971]

Q. In going from Hood River to Lost Lake, the only road you can go by is a road that goes by the Winans place?

A. I think it is.

Q. When you came back from that first trip on the 18th, did you stop at Winans' place?

A. Yes.

Q. How long were you there?

A. Well, I must have been there, well, a good half hour or a little over.

(Testimony of Retlaw Haynes.)

Q. You referred to somebody that you understood to be Walt Stegmann's brother. Was he still at the place when you left?

A. When I left to come to Portland?

Q. I beg your pardon?

A. You mean when I left Winans' place to come to Portland?

Q. Yes. A. No.

Q. Was Walt Stegmann there himself?

A. No, I am sure they left together.

Q. Well, as a matter of fact, wasn't Walt Stegmann there talking to Mr. Winans when you and the other engineer, Mr. Bogar, left?

A. No, I believe it was the other way around.

Q. You think they left first? A. Yes.

Q. Now, on the—any of those trips that you made up there, did [972] you keep any notes?

A. Well, Mr. Bogar has the field notes that we just kept of our survey notes, but as far as conversations or anything, no.

Q. The principal piece of work you were doing concerned the survey, to survey off those lots along the lake?

A. Well, that was more or less incidental to getting the boundary of this total of Lot 1 established.

Q. About how much time did you spend getting the lots surveyed off, marked off around the lake?

A. Oh, that was a useless survey what we did, but I imagine we spent two or three hours.

Q. You say that was useless? A. Yes.

(Testimony of Retlaw Haynes.)

Q. Why was it useless?

A. Because of the way they had me go about it, just was of no value when it was a different lot arrangement laid out the following week by a friend of Mr. Stegmann's.

Q. Did you have anything to do with the making of a sketch or a map following that survey?

A. I just made a little sketch I gave to Paul just showing our survey lines around the extremes of the Lot 1.

Q. You didn't give him any map or sketch showing the lots along the lake? A. No.

Q. I would like to show you Exhibit 303. It faces up when you [973] read the words. This is, however, north.

A. Yes, I am familiar with it.

Q. Are you familiar with this map?

A. I am familiar with the shape. I didn't see this map up at Hood River. There was one that was very similar to this, about the same size, and that was on a linen tracing cloth that I looked at in the City Engineer's office.

Q. This is——

A. That is the meander corner.

Q. Meander corner of, which is the north boundary of Lot 1, is it? A. Yes.

Q. The one that you saw in the City Engineer's office, did it have the lots marked off like this?

A. As far as I can remember, they were marked off like that.

(Testimony of Retlaw Haynes.)

Q. Would it be your best belief that it was actually marked off like this?

A. Well, that would be hard for me to say. Generally, yes, it is the same, but these lots could be a little bit different in feet or so. I can't remember for sure. It has been so long ago, but, generally, it is a likeness.

Q. But the one that you saw had lots from the northern boundary of Lot 1? A. Yes.

Q. Along the lake clear to the southern boundary? [974]

A. I don't know if it was clear to the southern boundary. The southern boundary is over here, but the lots came up to the creek.

Q. Those were small lots. Then the 5.31 acres south of the small lots, was that also on the lot that you——

A. There was a piece of land like that, these lots, about to that extent what they show here that was not divided into lots. Now, the details about this corner I can't remember.

Q. Then the 5.31 acres, the exterior boundaries were marked on that map, were they?

A. I can't remember the acreage.

Q. I mean, was there some square marked?

A. There was some lines left over there, yes.

Q. A square marked out there?

A. Well, as I best as I can recollect, it was square, rectangular at one time—where is the corner—southeast, the southwest corner of Lot 1 over here.

(Testimony of Retlaw Haynes.)

Q. I would say that if you add all of these distances——

A. There should be 1,320 feet across here (indicating).

Q. That is what I am getting at, is here if we add all these distances from the north boundary of Lot 1 to the southern boundary of the 5.31 acres, I think we will find that it is about 1,224 feet, which is about 106 feet less than the entire width of Lot 1?

A. Yes, well, there is a discrepancy somewhere on that. [975]

Q. Now, in the margin of this there are, you will notice the square area? A. Yes.

Q. Square foot areas are added up. Was there something on the margin like that, on the one you saw, showing that the total amount was something in excess of 8 acres?

A. I don't remember anything of a margin. There wasn't any margin on the piece I saw. It was just a piece of tracing cloth.

Q. Now, in this time that you said there was some talk about the Government's claim, there was talk about Winans having had the property for many years? A. Yes.

Q. What was said about that?

A. Well, they just mentioned the fact that his father had had the property since sometime in 1800 and Paul inherited it.

The Court: I didn't hear that last, had the property since sometime in the eighteen hundreds?

The Witness: Yes.

(Testimony of Retlaw Haynes.)

The Court: Then what happened?

The Witness: Then Paul inherited it from his father, is the way I understood. I believe that is how he acquired it. I might be wrong on that but that is my impression. That fact was mentioned like he had that property that length of time and had had no trouble.

Mr. Jaureguy: I take it that that statement was made by Paul [976] Winans in support of a contention or a belief on his part that he had good title and that the claim of the Government was not really a good claim; that is correct, isn't it?

A. I am not sure that that was the impression he was trying to convey.

Q. (By Mr. Jaureguy): Well, he said that his father had had it since the 1800's sometime. Then he inherited it and he had had it ever since. Then what else did he say that indicated that he thought he had good title to that 40 acres?

A. He did have good title except for this claim that the Government had on it.

Q. That is all he said?

A. Yes, and he said he wanted to make it clear that there was that claim so he would not be selling someone possibly property that weren't a fact.

Q. What I am asking you is, what else did he say in support of his contention that he had good title to the 40 acres?

A. That they had kept the taxes up on it.

Q. Did he say that he had put a mortgage on the property?

(Testimony of Retlaw Haynes.)

A. If he did, I don't recollect that. It is hard to remember all those conversations.

Q. He might have said that, too.

A. Well, he could have, but I don't have any remembrance of it.

Q. Do you recall him saying that some attorney had examined the abstract and passed it? [977]

A. Not in my presence, I don't believe. I don't recall it.

Q. Did he say that he had ever gotten title insurance on it?

A. I don't remember any conversation on that either.

Q. Then what he said in support of his contention that he really owned it was that his father had gotten it in the 1800's sometime and he had inherited it since then, and he had had it ever since, and he had been paying taxes on it?

A. Well, that is correct.

Q. Well, now, what do you recall about what he said about the nature of the claim of the Government?

A. Well, this 40 acres, I believe that was a piece that was supposed to have been originally set aside as school property, and I don't remember whether he explained how it happened to get into his private hands or not back in 1800, but, nevertheless, it had, and they had possession of it ever since.

Q. Your recollection is that what he was trying to convey was that this was supposed to have been

(Testimony of Retlaw Haynes.)

school property and should not have gotten from school property into private hands; is that it?

A. Something to that effect.

The Court: Did he talk about an Act of Congress when you were out in the field?

The Witness: No, that was in Vawter Parker's office.

Q. (By Mr. Jaureguy): Well, now, what was the difference, was there anything said in Vawter Parker's office different from [978] what you have been testifying to that was said in the field?

A. Nothing to the contrary that I remember. I remember this school lot had been discussed several times, so it wasn't—that registered because he had mentioned it so many times.

Mr. Jaureguy: That is all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan:

Q. You said here that in this discussion that took place in Vawter Parker's office, that you overheard Mr. Stegmann make some remark about admission of some knowledge, but you did not know what the paper was at the time or the substance of the paper at the time. Have you discussed this case and gone over the nature of that paper since then?

A. Well, I have been told what it was since then.

Q. By whom? A. Mr. Winan's attorneys.

Q. And have you discussed the nature of the

(Testimony of Retlaw Haynes.)

Government's claim with Mr. Winans' attorney since then, too?

A. Discussed the nature of it?

Q. Yes, and the problem relating to the Government's claim; was that explained to you?

A. I knew about that, that the Government had the claim. Now, what do you mean, discussed it?

Q. I mean in the discussion when this paper was explained to [979] you, did Mr. Winans' attorney explain the nature of the language on the paper and the meaning of it, to you? A. Yes.

Q. Did you go over it?

A. Well, he told me it was a deed and it was more or less exempting—I don't know how to word that—that he was to accept this property with the knowledge of this Government claim, something to that effect. I don't remember the exact words, what was said.

Q. Did you discuss this with Mr. Winan's attorney on one occasion?

A. I was up there twice, I think.

Q. Now, on the night of August 18th, that is in your memory, that is the first time you went up there, I believe, was the 18th, when you went up on a field trip with Mr. Bogar? A. Yes, sir.

Q. Then you returned. Did Mr. Winans pay you and Mr. Bogar off for your efforts as surveyors that evening? A. Yes.

Q. Then what happened; did you leave?

A. After he paid us, we left.

Q. Was there any delay in paying you?

(Testimony of Retlaw Haynes.)

A. Yes.

Q. What was that delay?

A. Well, we were waiting outside while Mr. Stegmann and this other man with him were in a conference with Mr. Winans in his [980] office.

Q. Now, in Mr. Vawter Parker's office, and up on the lake there, both times there was considerable difficulty in finally working out the survey of the lots, you said? Did you mean lots adjacent to the lake?

A. Yes.

Mr. Ryan: That is all.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. While a quarter of a quarter section is 1,320 feet, the frontage on the lake was a lot more than 1,320 feet, wasn't it?

A. Well, are you measuring the perimeter of the lake? Yes, it would be.

Q. Measuring the frontage, the perimeter of the lake, yes.

A. Yes.

Q. Because the lake cut right into this quarter of a quarter section; did it not?

A. Yes.

Q. So did you do any measuring at all as to how much footage there was of the lake front?

A. No.

Q. You did not do that? What you were doing, as I understand it, was to just locate the corners, that is, the southwest corner to begin with, then

(Testimony of Retlaw Haynes.)

run inland from the lake in order to get the [981] quarter section corner?

A. I started from the meander corner on the north boundary.

Q. Yes, you started from the meander corner. On which corner would that be?

A. It would be the northeast corner of Lot 1.

Q. It would be the northeast corner of Lot 1, and where did you go from there?

A. Then we went west to an existing monument at the northwest corner of Lot 1.

Q. Yes, was that the corner that also was a corner for this 40-acre tract?

A. Well, I understood it to be so.

Q. That is, it was inland from the lake, anyway?

A. Yes.

Q. Then where did you go?

A. Then we proceeded south between Lot 1 and those 40 acres for 1,320 feet.

Q. To another corner?

A. And established that corner.

Q. You established that corner. Then you went from there toward the lake?

A. Then we went east until we hit the lake.

Q. In order to find the boundaries of Lot 1?

A. Right.

Q. Now, what else did you do? [982]

A. Well, then we went back to the point of beginning when we started to lay out these lake-front lots, and at that time they couldn't agree on what shape to make the lots.

(Testimony of Retlaw Haynes.)

Q. Well, do you recall that Mr. Winans was to receive about an acre close to the northeast corner of lot—of this Lot 1?

A. An acre by that northeast corner?

Q. Well, that was the—the corner where you started your survey, wasn't it? A. Yes.

Q. I beg your pardon?

A. I don't remember that.

Q. The meander corner? A. Yes.

Q. The northeast corner of the lot, the meander corner? A. Yes.

Q. Was there anything said about whether Mr. Winans was to receive an acre in that area there?

A. I don't remember of it.

Q. Do you remember whether there was a difference in the type of lake front, that is, whether it was firm ground there in the northeast section, and then you got into swamp when you went down to the south? A. The southern portion.

Q. The southern portion of it?

A. Yes. [983]

Q. It was swampy down there?

A. Yes, towards the mouth of the creek and south it was marshy.

Q. Now, in order to definitely establish the date on which you were up there on the first time, I have here a check payable to Mr. Bogar in the sum of \$90. Will you examine that? It is Exhibit 328.

A. Exhibit 328.

(Witness reads check.)

(Testimony of Retlaw Haynes.)

A. Yes.

Q. Was that the check made to Mr. Bogar received on the night of the 18th for your services up there that day?

A. Yes, sir.

Q. Now I wish you would tell the Court a little more clearly what happened when you got down—strike that for a moment—do you know who Chet L. Parker is here in the courtroom now?

A. He has been pointed out to me since I have been in the court.

Q. Yes, is that the gentleman that was ever introduced to you up there as a brother of Stegmann?

A. I don't remember of having ever seen him.

Q. Well, you said that on the 18th you met someone that was introduced as a brother of Stegmann?

A. Yes.

Q. Was that man the same man as this Mr. Chet L. Parker?

A. It seems to me it was a taller man.

Q. So you would say that Chet Parker was not the man that you [984] met there that day?

A. No, I am quite sure he wasn't.

Q. Would you tell us about when you got down from Lost Lake back to Dee where Mr. Winans' home was, just roughly now.

A. Well, I guess around six o'clock.

Q. You had surveyed up there as long as you were able to see in the trees?

A. Yes, sir.

Q. And then drove down. Now, did Stegmann and this man that was with Stegmann and the rest of you all come down at the same time?

(Testimony of Retlaw Haynes.)

A. Yes.

Q. All right, now, tell us what Mr. Winans and Stegmann were doing after they got down to Mr. Winans' place?

A. Well, I don't know what they were doing because Paul asked us to wait outside while he finished some business.

Q. Then that is what you were doing, you were waiting outside, and they were in a little service station building, weren't they? A. Yes.

Q. They were in, evidently, to transact some business while they were in there?

A. That is what I understood they were doing.

Q. Well, did you see them handling any papers while they were in there?

A. No, I wasn't looking in the window. I was sitting out there [985] waiting.

Q. You were sitting outside waiting for Winans, weren't you? A. Yes.

Q. At any rate, the two of them were conferring in there for about how long?

A. Well, as I remember, about half an hour.

Q. Was it impressed upon your memory for any particular reason that this did occur, Mr. Haynes?

A. Yes.

Q. Well, give us the reason that it impressed on your memory.

A. Well, I was pretty disgusted with having to wait because I was anxious to get home, and Mrs. Winans brought us over some cool drink to drink while we were waiting.

(Testimony of Retlaw Haynes.)

Q. You were still going to drive back to Portland that night? A. Yes.

Q. You had been rather impatient about the delay? A. That's right; that's right.

Q. But you were waiting there to receive your compensation? A. Yes.

Q. Would you tell us what happened, I mean, after they broke up their conference in the building, what happened?

A. Well, as clearly as I can remember, they left, and we went in.

Q. Now, who is "they"?

A. Mr. Stegmann and this other man with [986] him.

Q. But Winans remained there? A. Yes.

Q. Then you and Mr. Bogar went into the building with Winans?

A. Yes, and he wrote out a check.

Q. Then this check was written out for \$90 here? A. Yes, sir.

Q. Made payable to Mr. Bogar? A. Yes.

Q. What did you do then?

A. Well, we took off.

Q. Well, you came out of the building. Where was your car?

A. Well, it was—I don't remember which side of the building it was on or right in front, but it was right close up.

Q. Right close up. As you came out, did you see anything, any more of Stegmann and this other man?

(Testimony of Retlaw Haynes.)

A. I don't remember of having seen them.

Q. Then you left Dee? A. Yes.

Q. And drove toward Hood River?

A. Yes, sir.

Q. On the day you were in Vawter Parker's office, the attorney's office, Mr. Stegmann was there and Mr. Parker and Mr. Winans; is that right?

A. Yes.

Q. Was anything said about how they were going to pay for the [987] property?

A. Mr. Stegmann had a personal check there.

Q. Tell us about that.

A. Well, he was going to pay for it with that. Mr. Winans' attorney said it was such a large sum involved that he would advise that he require a certified check instead of a personal check and Mr. Stegmann was rather upset about that because that required another trip up to——

Q. Did he say it would require a trip?

A. Yes, it would require another day, another trip. He was kind of peeved about it, that they wouldn't accept his personal check but he finally agreed to furnish one, a certified check.

The Court: Did he say that he would have to make a trip some place to get that check?

The Witness: Yes, as I recall, I had the impression he had to come down to Portland and go to Salem or somewhere in that area, then come back the following day.

The Court: Was it McMinnville?

The Witness: Well, it could have been McMinn-

(Testimony of Retlaw Haynes.)

ville, but it was somewhere where he had to pass through Portland.

The Court: Do you know who Mrs. Chet L. Parker is?

The Witness: No.

The Court: She is the lady in between Mr. Parker and Mr. Stegmann.

The Witness: Yes. [988]

The Court: Did you see her at Hood River at any time?

The Witness: I didn't see her to know her if I did see her. I never knew who she was.

The Court: You don't recall ever having seen her?

The Witness: No.

Q. (By Mr. Krause): Mr. Haynes, you testified that you were back there again on August 25th and 26th, and I am going to hand you—were you paid that day, too, by Mr.—that is, on the 26th?

A. 26th?

Q. By Mr. Winans? A. Yes.

Q. For your services and those of the other surveyor that was with you?

A. Yes, I believe he made it all out to me, as I remember.

Q. Yes, the check is made out to you. It is Exhibit 328-B. Is that the check that was given you on the second day you were up there?

A. Yes.

Q. That was in payment of surveying services?

(Testimony of Retlaw Haynes.)

A. For that Saturday and Sunday by Mr. Kuns and myself.

Mr. Krause: I would like to offer those two checks. One is 328-A. They will have to be remarked by the reporter. And the other is 328-B.

The Court: Any objection? They may be [989] admitted.

(Check dated August 26, 1951, to R. W. Haynes for \$143.00, previously marked Defendants' Exhibit 328-A for identification, was received in evidence.)

(Check, dated August 18, 1951, for \$90.00, to L. A. Bogar, previously marked Defendants' Exhibit 328-B for identification, was received in evidence.)

Mr. Krause: I have no further questions.

The Court: Any further questions?

Cross-Examination

By Mr. Jaureguy:

Q. Did you say that Stegmann, on Saturday, the 8th, Stegmann had a personal check there?

A. It was that Saturday. I guess it was the 8th.

Q. You were not there the following Monday?

A. No, it was a Saturday he had a personal check.

Q. He had a personal check?

(Testimony of Retlaw Haynes.)

A. That is what he said. I didn't look at the check, but that is what was said.

Q. Well, do you know whether the deed was ready to be delivered on that day?

A. Well, I don't know about that. That was not part of my business, and I just don't recall if I heard the deed was ready or not, except that this paper that he refused to sign, whether [990] that was a deed I am not sure.

Q. Do you know what he said, was that he had a personal check, or whether he asked whether they would take a personal check?

A. Well, he said he had a personal check.

Q. But he didn't take it out of his pocket, so far as you know?

A. I can't remember whether he did or not.

Q. You have indicated that you left there before Stegmann and his brother left. You are not sure of that, however?

A. I didn't say I left before they did.

Q. I am talking about—I beg your pardon, I am talking about the 18th. I should have called that to your attention, the 18th, when you were down at the Winans' place.

A. The 18th?

The Court: He did not so testify.

The Witness: That was the first trip.

Q. (By Mr. Jaureguy): Oh, yes, you testified that the Stegmanns left before you did?

A. Yes.

Q. I have got that all balled up. But you are not sure of that?

A. Well, I am quite sure of it.

(Testimony of Retlaw Haynes.)

Mr. Jaureguy: All right. That is all.

The Court: Mr. Ryan?

Mr. Ryan: I have no further questions.

The Court: That is all, Mr. Haynes.

(Witness excused.) [991]

The Court: We will take a recess.

(Brief recess taken.)

CLAUDE PARROTT

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Parrott, you are employed by the United States Forest Service? A. Yes.

Q. In the month of August, 1951, I believe you were stationed at the Parkdale Station?

A. That is right.

Q. How far is the Parkdale Station from Lost Lake? A. Oh, probably 17 miles.

Q. And are you acquainted, or is that part of the land within your jurisdiction? A. Yes, it is.

Q. And are you acquainted with the property involved in this litigation?

A. Not other than knowing where it is.

Q. Have you been on the property?

A. No.

Q. Now, Mr. Parrott, did you have occasion to talk with some [992] men on August 13th, 1951, in regard to this property? A. Yes, I did.

(Testimony of Claude Parrott.)

Q. How do you fix that date?

A. We keep a diary of the activities during the day for payroll purposes, and I had written it up, and at a later date I had written down about these men coming in and inquiring about some property.

Q. I will have the bailiff hand you Exhibit 71. I will ask you if that is a photostatic copy of the page from your diary to which you have made reference?

A. Yes, it is.

Q. Does that diary indicate the time of the day on August 13th that these men were in your station?

A. No, it does not. It says there that at 5:45 I returned back to the Parkdale Ranger Station.

Q. You had been out on a field trip that day?

A. Yes, I had.

Q. You came back to the station at 5:45?

A. Yes.

Q. Were these men waiting for you when you got back?

A. Yes, these two men were at the office at that time.

Q. Who were the two men?

A. They did not introduce themselves.

Q. Have you since found out who they are?

A. Yes, I have. [993]

Q. Who are they?

A. I found out later they were Walter Stegmann and Chester Parker.

Q. Do you recall Mr. Stegmann and Mr. Parker as the men you saw on that day?

A. Yes, I do.

Q. All right, now, will you just relate to the

(Testimony of Claude Parrott.)

Court what your conversation was with them on that day?

A. Well, as my diary states, I got in approximately at 5:45 and walked in the office, and the regular clerk that day had his day off because during the summer time they work a split shift and this other person was filling in in the clerk's place. He was not accustomed to the ownership books which we have, and so when I walked in he asked if I could help him a little bit.

I asked them what they wanted. He said—these two men said they were interested in some property at Lost Lake and they wanted to know about this property, so I asked them. They told me where it was. I got the status book which we have.

Q. Now, right at that point, let me hand you another exhibit, Exhibit 72. I will ask you if that is a photostatic copy of a status book of the plat that you had there in your ranger station?

A. Yes, this is one out of the office.

Q. All right, go ahead with your conversation.

A. Then, as I brought this book over, I probably laid it up on [994] the counter there, which I usually do, or if somebody is in there, why, they come back to the back office and when he give me the description and I looked at it, why, then I told him it was questionable property according to our status book.

Q. Questionable property?

A. Yes, as to the ownership, and so then we went

(Testimony of Claude Parrott.)

on and talked a while and these two men had been up at the lake that day and they had found this one section line board up there on the trail that goes around, and they didn't seem to think that was just on the line, and I told them that the section lines were fairly close lines; they were just a ready fast means during the summer time in case of a lightning fire or some other type of fire up there, and we have short-time employees around who can locate themselves, get in there with them. So then they understood that, and then we went on and talked a while longer, and so then, during the course of the conversation, Mr. Petersen come in.

Q. Mr. Petersen is an associate of yours that works for the Forest Service?

A. Yes, he is, he is a district assistant. And so, as he come in, why, he come over and started talking with us also, and then these two men—this one man which I assume to be Mr. Parker was doing all the talking, most of it, ninety per cent probably, so just before they got ready to leave he said, "Well, if it is questionable property," he said, "There is one way to tell," he says "If I got property I can go up and fall a tree and you can [995] bring suit against me, and if you fall a tree I can bring suit against you." He said, "That is the best way to settle this case," or words to that effect. It might not be just as he said it, but it was words to that effect.

Q. All right, now, was there any conversation about some signs on the property?

(Testimony of Claude Parrott.)

A. Yes, there was.

Q. What was that?

A. He asked me what we done if we come across these Bull Run Water Division signs which are posted down the line on the Portland watershed, by an Act of Congress. I told them as far as I was concerned if we had business in there, it didn't bother us at all because we had to get in there, and I said I didn't know in his case. I said—I don't know whether I told him about whether a trail goes through or not.

Q. I don't know what you mean about the signs bothering you?

A. Well, in our official work if—just for an example, we used to run a telephone line into Bull Run Lake, which is quite a ways inside of the Reserve. Well, as long as we had work in there working this telephone line, we would work the line in, then come back out again, but as far as us going in there just on a pleasure jaunt and looking around, why, we don't do that.

Q. Here is what I do not understand. As I understand, these men told you about some signs that were posted on the property?

A. Yes, yellow signs. [996]

Q. What do those yellow signs say?

A. Oh, it has been so long since I looked at one, but I believe they say, "Closed to the public by Act of Congress" and gives a date.

Q. Did they say anything about Bull Run Timber Reserve?

A. Bull Run Watershed.

(Testimony of Claude Parrott.)

Q. Bull Run Watershed?

A. I believe that is the way it states.

Q. It is those signs that they asked you about?

A. It is those signs, yes.

Q. Do you know where those signs were with reference to this 40-acre tract?

A. No, I don't.

Q. They didn't mention where the signs were?

A. I don't believe so.

Q. What was your explanation to them about the signs?

A. I told them as far as we were concerned it did not make any difference about us going in there and working, but in their case I didn't know what it would be when they were back in the Bull Run.

Q. What did you tell them about the question as to title on those 40 acres?

A. Well, I told them that their 40 acres was in question, that, however, the property that they were inquiring about——

The Court: I cannot understand that. You told them that [997] the 40 acres was in question, and I didn't follow you from that point on.

The Witness: And that, however the Winans did have, definitely owned the front part of that on the lake, so far as I could tell from the status book.

Q. (By Mr. Strayer): Now, did you show them the status book?

A. I probably did. I don't know whether I did or not because I just took it, laid it up there. We was all standing right there around a counter.

(Testimony of Claude Parrott.)

Mr. Strayer: First of all, your Honor, I would like to offer in evidence at this time Exhibits 71 and 72.

The Court: Any objection?

Mr. Jaureguy: I have not seen 72.

The Court: 71 is admitted.

(Document, photostatic of page from Forest Service diary, previously identified as Plaintiff's Exhibit 71, was received in evidence.)

Mr. Jaureguy: There will be no objection. I would like to examine it further later.

Mr. Ryan: I have no objection either.

The Court: It may be admitted.

(Document, photostatic copy of plat from status book of Forest Service, previously marked Plaintiff's Exhibit 72 for identification, was received in evidence.)

Q. (By Mr. Strayer): I notice on your land status record, Mr. [998] Parrot, under the heading of "Winans, Section 16," you have written in "Lot 1." Then you have a check mark under the north-east of the northwest, and then out to the right in parentheses the words are written "Lot 1 only."

A. That is probably right.

Q. Do you remember talking to Mr. Parker and Mr. Stegmann about that notation in the record?

A. Well, I just mentioned the fact that that back forty was questionable.

Q. I notice on the plat attached to the status rec-

(Testimony of Claude Parrott.)

ord, Exhibit 72, I notice that on the 40-acre tract the words are written in here—I am not sure that I can read those words—it looks like “Title” something or other. Can you read those words, Mr. Parrott? A. No, I can’t on this.

Mr. Buell: The original document is in the Clerk’s custody. Perhaps we had better clear that up with the witness.

(Document tendered to witness.)

Q. (By Mr. Strayer): Can you read the words there on the 40-acre tract?

A. “Title not clear.”

Q. “Title not clear.” Now, was that pointed out to Mr. Stegmann and Mr. Parker on August 13th?

A. If they looked at the book they probably noticed that.

Q. Do you recall any mention in your conversation there about [999] the plat at the Title and Trust Company office? A. No.

Q. How was the conversation left? Was it suggested that they see anybody else regarding the matter?

A. Well, yes. As they left, I told them that Mr. Cooke from the Portland office on timber management, along with Ranger Holthy and the timber manager from our district would be in Lost Lake the next morning. They would be in there because I had taken their pickup or panel in for them, that they would be at the lake the next morning probably until 7:30. If they wanted to clear up some

(Testimony of Claude Parrott.)

more of this, they could go up to the lake the next morning and talk to them.

Q. Now, from that time until this trial, when you came to this trial, have you seen either Mr. Stegmann or Mr. Parker? A. No.

Q. Did you recognize them when you came in the courtroom? A. Yes.

Q. Do you know who made the notation on these records in your office?

A. That "Title not clear," looks like Stanley Walters' writing.

Q. Who is Stanley Walters?

A. He is a retired District Ranger.

Q. Do you know where he is now?

A. Yes.

Q. Where is he? [1000]

A. La Jolla, California.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. I take it from your testimony, then, that it was almost a year and a half after this occasion of August 13th before you had occasion to try to identify the two men that were there?

A. Yes, that is right.

Q. Can you tell us how the man that you think was Mr. Parker, how he was dressed on that day?

A. Yes, he had on a hat. He had on a green cruiser's coat, and that is all I could see. He was

(Testimony of Claude Parrott.)

standing against the counter. I didn't notice the color of his trousers he had.

Q. How tall was he?

A. Well, the one I assumed to be Mr. Parker was probably five foot twelve, five foot nine, five foot ten.

Q. Was he taller or shorter than the other man?

A. He was shorter.

Q. Five foot nine or five foot ten, you say?

A. Approximately, I imagine. I mean, I didn't pay much attention.

Q. Of course, I take it that it would be impossible for you to try to describe him without having in your consciousness what you may have seen in here that you have identified this man?

A. Well, I looked him over pretty good that night in the office [1001] there.

Q. What was the occasion of that looking him over so good?

A. Well, it was just that—it seemed to me like they was doing an awful lot of talking, and I was just kind of listening.

Q. Now, do you have a Metsker map up there, too? A. Yes, we have.

Q. I show you Exhibit 110 and ask you whether that page is a copy of the same Metsker map you have there?

A. That I could not say because I never look through Metsker unless I want to look up some property, and property changes so fast that they are really not too accurate anyway.

(Testimony of Claude Parrott.)

Q. Taking this Exhibit 72, the Land Ownership and Protection Status Record, if we look only on the left one-half of the first sheet of that, that indicates that Winans owns the northeast quarter of the northwest quarter of that property; does it not?

A. The what?

Q. The northeast quarter of the northwest quarter of that section.

A. There is a check mark there, yes.

Q. What do those check marks indicate?

A. That is the approximate location of the property.

Q. What property?

A. That is being described by these numbers (indicating).

Q. Well, now, can you tell by looking at this property, by looking at this sheet, what property the Oregon Lumber Company [1002] owns?

A. Yes.

Q. And they own the northwest quarter—well, now, here's a check mark, the northeast quarter of the northwest quarter, and a check mark opposite Winans' name, and does that indicate that he owned the northeast quarter of the northwest quarter?

A. Not necessarily.

Q. What does it mean?

A. Well, it is supposed to be that they own that, but you have also got to go on through here and read the remarks.

Q. I am saying this, that if you merely look at the left-hand portion of the sheet and do not

(Testimony of Claude Parrott.)

look at the right-hand portion, that shows that Winans owns it; does it not?

A. Yes, if you just look at that.

Q. That is what I am saying. A. Yes.

Q. Now, this "Lot 1 only" that is on the right-hand portion, that was written after the other words that are on that right-hand portion were written?

A. It is probably a different person's writing because here different people work on these. There is no one certain man, and maybe that was written at the same time, you can't tell.

Q. By a different man?

A. By a different man. Maybe somebody had it in there and somebody else went through and checked it, and they put this in. [1003]

Q. But on the left-hand portion of this sheet it shows that Winans owns Lot No. 1 and also the northeast quarter of the northwest quarter, and then when you go over to the right-hand portion it says "Lot 1 only"?

A. It says here "Approximately 25.8 acres."

Q. Yes, that was written also by a different hand than the rest of the figures in that column, wasn't it?

A. Who wrote those figures there, the writing was E-S-M. That is a timber man there, his figures, evidently, because he has got them down there 1939.

Q. The figures, you mean, were log figures?

A. He has checked the book. Maybe the original figures were put in there in 1935.

Q. Well, yes, but this approximately 25.8 were

(Testimony of Claude Parrott.)

not part of the original figures; that is correct, isn't it? A. Evidently so, yes.

The Court: You say the other figures were put in there in 1939?

The Witness: Some of them could have been put in there any time after 1939.

The Court: Any time after that?

The Witness: Yes, each year these are brought up to date, or they were at that time. Now, we do not bother about filling them out here.

Q. (By Mr. Jaureguy): On the next sheet where there is written [1004] in the square representing the northeast quarter of the northwest quarter of that Section 16 "Title not clear," you couldn't say when and by whom that was written in there? A. That is Stanley Walter's writing.

Q. Stanley Walter's writing? A. Yes.

The Court: When did he retire?

The Witness: June, 1947, I believe.

Q. (By Mr. Jaureguy): Coming back again to this first sheet of this status record, Winans is the only one there that is shown owning any property in Section 16; that is correct, isn't it?

A. That is correct.

Q. Originally that was W. R. Winans, but later that was changed to Ethel Winans; that is correct, isn't it? A. Evidently.

Q. So that if you look on the left-hand portion of this piece of—this page, and then disregard the right-hand portion, Ethel Winans is shown as owning Lot 1 and the northeast quarter of the north-

(Testimony of Claude Parrott.)

west quarter of Section 16?

A. According to the left half, yes.

Q. This "Title not clear" is intended to mean that the title of Ethel Winans is not clear?

A. That is right.

Mr. Jaureguy: You may take the witness. [1005]

Cross-Examination

By Mr. Ryan:

Q. Were you in the courtroom before today?

A. Yes, I was.

Q. Was defendant Stegmann pointed out to you?

A. No, he was not.

Q. You say it is your recollection that this happened in the evening? A. Yes, it did.

Q. Your recollection has it that Mr.—the man you thought to be Mr. Parker did most of the talking? A. He did.

The Court: Were you here a week ago or two weeks ago?

The Witness: Yes, I was.

The Court: Did you hear either of them testify?

The Witness: I heard Mr. Parker, yes.

The Court: Could you recognize him from his voice as well as from his looks?

The Witness: No, that first day that I come down when we got subpoenaed, the first day I come up the elevator early just to see if I could recognize the couple men that I had seen before. I done that on my own.

(Testimony of Claude Parrott.)

The Court: Were both of these men in the courtroom then?

The Witness: No, they come up the stairs [1006] later.

The Court: Did you recognize them as soon as they came in?

The Witness: Yes.

The Court: They were not pointed out to you?

The Witness: No.

The Court: Was that the first time you had ever seen them since the time they were in your office on the 13th of August?

The Witness: Yes, it was.

The Court: Had you seen pictures of them in the meantime?

The Witness: No, I had not.

The Court: Mr. Krause?

Mr. Krause: Nothing.

The Court: Mr. Strayer? Do you want to ask him any more questions, Mr. Jaureguy?

Mr. Jaureguy: I would like to show this to Mr. Parker, if I can.

The Court: Mr. Strayer?

Redirect Examination

By Mr. Strayer:

Q. I am not clear in my mind on your testimony about somebody's retirement. Who was it that retired in 1947? A. Stanley C. Walters.

Q. The man that made the notes on the [1007] record? A. Yes.

(Testimony of Claude Parrott.)

Q. Now, do you know whether any of these notations that we were inquiring about, such as "Lot 1 only" on the first page, and "Title not clear" on the plat, were either of those notes made after August 13, 1951, or were they on there at the time that these two men were in your office?

A. I don't believe that they have been changed, not to my knowledge.

Q. Since August 13, 1951. Now, I wonder—I have a little trouble reading the notation on the diary. I wonder if you will help me read that entry?

A. Which one?

Q. The last entry in your diary.

A. "Two men in to talk about Winans' land at lake."

Mr. Strayer: That is all.

Recross-Examination

By Mr. Jaureguy:

Q. Do you make entries on this status book?

A. Yes, I have.

Q. None of these entries, however, are in your handwriting?

A. I don't believe so.

Q. How many men are there up there that make entries in this status book?

A. Probably four or five.

Q. Have any of them made entries on this [1008] page?

A. I do not know.

Q. Would you recognize the handwriting, "Lot 1 only"?

A. No, I do not.

(Testimony of Claude Parrott.)

Q. Could that be one of the men that is there now? A. I do not know.

Q. What about "Title not clear" on the next page? You do not recognize the handwriting either? A. Yes, I do.

Q. Oh, I think you testified to that?

A. I did.

The Court: He testified that the man who made that entry retired in 1947.

Mr. Jaureguy: Yes, I recall now.

When you saw Mr. Stegmann and Mr. Parker the first time you came in the courtroom, were they together? A. They were not together.

Q. Where were they?

A. They come in separately.

Q. One right after the other, or how long apart?

A. I believe Mr. Parker come in ahead of Mr. Stegmann.

Q. Then how long after did Mr. Stegmann come in? A. Oh, probably five minutes or so.

Q. In this Forest Service meeting on August 13th, were you in there when these men came in, or did they come in——

A. These men were in there when I came in. The car was [1009] out in front of the office when I come around with the truck driver.

Mr. Jaureguy: That is all.

The Court: Do you recall what kind of a car they had?

The Witness: It was a two-door car, fairly late

(Testimony of Claude Parrott.)

model, about a '50 or '51. It had Washington license plates on it. "G" was the first number.

The Court: Was it sort of a station wagon or——

The Witness: No, it was not; it was a two-door car.

The Court: Go ahead.

Mr. Strayer: That is all, Mr. Parrott. Thank you. Do you want to take these original records back?

The Court: Well, the original documents may be taken back and the photostatic copies substituted in the meanwhile.

Mr. Strayer: We have the photostatic copies. That is all, Mr. Parrott, thank you.

The Court: You are excused from further attendance at the trial.

(Witness excused.) [1010]

JOYCE PETERSEN

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Petersen, you are also employed by the United States Forest Service, are you not?

A. That is right.

Q. In the summer of 1951, you were stationed at the Parkdale Station in Hood River County?

A. That is right.

(Testimony of Joyce Petersen.)

Q. Now, did you have occasion during the summer of 1951 to meet Walter Stegmann?

A. Yes, I did.

Q. By Walter Stegmann, I refer to the gentleman here——

A. In the blue suit.

Q. ——in the dark blue suit.

A. That is right.

Q. On what date did you first meet Mr. Stegmann?

A. Oh, I couldn't say. It was along, I believe, in the spring of 1951, possibly May or June.

Q. Will you tell us where the meeting was and just what happened?

Mr. Jaureguy: Object to that as far as Parker is concerned as not binding on him. [1011]

The Court: You do not have to make that objection any more, Mr. Jaureguy. I will assume that you make it.

Mr. Jaureguy: Very well. Thank you.

The Witness: Well, he stopped into the ranger station office inquiring about some land that was owned by a private individual and the timber rights was reserved by Hood River County, and he introduced himself to me as Stegmann and made those inquiries about this land. That is where I first met him.

Q. What type of land did he say he was interested in?

A. Well, he led me to believe that he was a cattleman, and he wanted to get this timber off of this county land, or off of this—this timber off of

(Testimony of Joyce Petersen.)

this private land which was held by the county, and he was trying to find out some way that he could get rid of that county timber off of this land so that he could plant grain, grass and raise cattle.

Q. How long did you talk with him on that occasion?

A. Oh, probably 20 minutes, 15 minutes, maybe.

Q. Was anybody else with him?

A. I believe there was somebody out in the car, but he was the only one that came into the office.

Q. All right. Now, when was the next occasion that you saw Mr. Stegmann, if you ever saw him?

A. The night of August 13th, the night that they were in inquiring about the Lost Lake timber. [1012]

Q. Where had you been on that afternoon, Mr. Petersen?

A. On August 13th?

Q. Yes.

A. Oh, I don't recall. I imagine out in the field. Unless I had my diary I don't recall where I had been.

Q. Were you there when Mr. Stegmann arrived at the ranger station?

A. No.

Q. Who was there when you got there?

A. Well, there was Claude Parrott and Mr. Stegmann and Mr. Parker.

Q. Had you met Mr. Parker before that time?

A. I had not, no.

Q. All right. Now, just go on and relate what conversation took place after you arrived there on August 13, 1951.

A. Well, there wasn't very much. I was just

(Testimony of Joyce Petersen.)

in on the tail end of it, but, as I recall, they had this status book that has been in question here for the last 10 or 15 minutes here, laying out on the counter. and Mr. Parker, or the gentleman—at that time I didn't know that he was Mr. Parker. I knew Mr. Stegmann but I didn't know Mr. Parker. He was doing all the talking, and he asked me, he says, "What do you know about this question mark on this?"—the status book we have here. And I says I didn't know much about it except that the title to that piece of property was in question, and [1013] he wanted—I suppose he asked me if I knew what it was, and I didn't. I didn't know what it was. and he said, "There would be one way of clearing it up, would be to go up there, make the trespass by cutting a couple of trees, and you would have to come up and stop us. Then we would have a trespass case and we could get the title cleared up on it." And he also asked me about a section line board that we had posted on a trail going through there. He wanted to know what it had—on this section line board somebody had put a quarter corner on there which should not have been on this board. He asked me about that. I told him it didn't amount to too much. It was just a board that we had stuck around in the brush to identify section lines where they go through the brush, and it went to a meander corner instead of to a one-fourth corner, and that was just about all the conversation I had because they were just get-

(Testimony of Joyce Petersen.)

ting ready to leave, and I just came in the evening there as we was closing up.

Q. Have you ever been on this Lost Lake property that we are talking about here?

A. Yes, I have.

Q. Are there any signs there on the property, any Government signs of any kind?

A. I couldn't say, but I don't believe there is any more than this section line marker.

Q. I am referring to these Bull Run Water Reserve signs [1014] that Mr. Parrott was talking about. Do you know of any signs of that kind around there?

A. I couldn't say. But they run all over our district from the west end of it. These signs are posted on the whole boundary. Whether or not they were on this particular forty I couldn't say.

Q. Do you recall hearing any conversation about the signs on August 13th, when Mr. Parker and Mr. Stegmann were in there?

A. No, they had probably talked about that before I came in.

Q. You say that Mr. Parker asked you about a question mark. I wonder if you can indicate the question mark that you mean, or did you mean question mark for a question?

A. It was this here "Title not clear," this piece right in here (indicating).

Q. Oh, the words "Title not clear" indicate a question mark; is that what you mean?

A. Well, I had it in my head that that was a

(Testimony of Joyce Petersen.)

question mark on there instead of that "Title not clear" because I don't remember really paying much attention to it at that time.

Q. Well, does this refresh your recollection? Does this exhibit refresh your memory on what was on it at that time?

A. Well, no, I don't even believe I looked at it because I knew about this here—on this particular sheet, as you can see, that is the only private ownership that is on it, and [1015] we only have this quarter interest on it, and I didn't even look at it when we was talking about it at that time. They had discussed that before I came in.

Q. What you mean, I take it, is that Mr. Parker asked you about if you knew anything about the question as to title or words to that effect?

A. Yes.

Q. I see.

A. Yes, that the title is in question on the forty.

Q. Now, from that day until the time that this trial started, have you seen either Mr. Stegmann or Mr. Parker? A. I don't believe that I have.

Q. Is there a question in your mind as to the identity of Mr. Stegmann or Mr. Parker?

A. No.

Q. As being the two men that you saw on August 13th, 1951? A. No, there is no question.

Q. Did you recognize them when you first saw them? A. I did.

Mr. Strayer: That is all.

(Testimony of Joyce Petersen.)

Cross-Examination

By Mr. Jaureguy:

Q. Did you see them up there at Lost Lake in September of 1951? A. No, I didn't. [1016]

Q. With Mr. Holtby?

A. No, I was not with him.

Q. You were not with him, and you think—you have not seen him since August 13, 1951?

A. Not until we came down to the case down here.

Q. You are rather certain it is the same man?

A. Yes.

Q. Do you remember how he was dressed?

A. Yes, I do.

Q. How was he dressed?

A. He had a cruiser's coat on and practically cruiser's gear all the way down except I didn't see what he had on his shoes, what kind of shoes he had on, but he had a regular cruiser's coat, and he had a hat and he had an open shirt just like cruisers would have, regular woods clothes.

Q. Was he there when you came in, or were you there when he showed up?

A. No, he was there when I came in. I came in late that night from the field.

Q. About what time?

A. Oh, I presume it was six o'clock, maybe a little after, right around six.

Q. Was Mr. Parrott there at the time?

(Testimony of Joyce Petersen.)

A. Yes, he was; he was talking to the two gentlemen.

Q. You say one of them asked you about a question mark? [1017]

A. Yes, that was—Parker did all the talking. Stegmann never said a word after I came in.

Q. You told him you didn't know what the question was of the title?

A. No; no, I didn't know what the question was.

Q. Well, your knowledge that the title was in question, that was derived from the status book; is that right?

A. That is right, from the status book and from the talk which had been rumored around because it was just that one piece up there around the lake, and we had been trying to get control of the property around the lake.

Q. You had been trying to get control of the property around the lake, you say?

A. Yes, through exchange.

Mr. Jaureguy: That is all.

Mr. Ryan: No questions.

Mr. Krause: We have none.

The Court: That is all. You are excused.

(Witness excused.) [1018]

RALPH W. COOKE

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Ralph Cooke? A. Yes.

Q. Would you please state what your occupation is?

A. I am a forester with the United States Forest Service.

Q. You are located here in Portland, are you?

A. I am.

Q. What is your job or employment with the Forest Service? What are your duties and functions?

A. The principal duty is handling the sale of national forest timber.

Q. In any particular national forest?

A. In the Mt. Hood National Forest.

Q. Now, have you been familiar with the—or generally connected with the negotiations which have been carried on from time to time by Paul Winans with the Forest Service relative to possible exchange of the land that Mr. Winans claimed to own up at Lost Lake?

A. Since 1942, when I came on the forest.

Q. 1942 is the first mention you had?

A. Yes. [1019]

Q. Let me ask you this: Have you had any training or particular experience with regard to the

(Testimony of Ralph W. Cooke.)

cruising of timber and the establishment of timber values? A. Yes, that is part of my duties.

Q. What is your classification in the Forest Service, or do you have any particular classification?

A. Well, I am a staff officer assisting the forest supervisor.

Q. Are you able to cruise timber yourself?

A. I am.

Q. Have you had any field experience in the actual cruising of timber? A. I have.

Q. How much, or just to shorten it up, would you give us just a short statement of the experience that you have actually had yourself in cruising?

A. Well, all told, I would say probably three years of actual work in the field on the cruising work.

Q. In your work in handling these timber exchanges in the Mt. Hood National Forest do you calculate your values based upon the Forest Service cruises that are made under the particular district rangers affected? A. Yes.

Q. One question in connection with this particular lawsuit: Have you ever been contacted by Mr. Chet L. Parker, [1020] one of the defendants in this case? A. No.

Q. You have never talked to him at all?

A. No.

Q. How about Mr. Walter Stegmann, another one of the defendants, have you ever met him to your knowledge? A. I have never met him.

Q. Ever talk to him?

(Testimony of Ralph W. Cooke.)

A. Never have talked to him that I can recall.

Q. Mr. Cooke, I am handing you what has been marked for identification Exhibit 63-D, which was from the Forest Service file which you brought into court here a few weeks ago, and would you please identify what that document is?

A. That is a valuation of the proponent's property in an exchange that we were proposing with Mr. Paul Winans.

Q. Does that cover a 40-acre tract and a 25.88-acre tract at Lost Lake?

A. Yes, that covers both tracts.

Q. Is that a summary of the values, or just exactly what is it?

A. That is a summary.

Q. Was that prepared by you?

A. It was prepared by me, and the notations in pencil or pen adjacent to the typed figures are, I believe, a revision of it by some member of our regional forester's office. [1021]

Q. You are able actually to identify who that man is?

A. I cannot. I do not recognize these initials. At the present time there have been a great many changes in personnel in that office.

Q. Can you tell us from that exhibit, Mr. Cooke, what was the gross volume of timber of all species on the two tracts?

A. 2,655,000 board feet.

Q. Now, in arriving at that figure, Mr. Cooke, were the culls—is there cull or defective timber included within that 2,655,000 feet?

(Testimony of Ralph W. Cooke.)

A. That is what we estimate as net volume. The defects have been deducted.

Q. Now, to explain this particular document, referring to the first page of it I see you have the—it is broken down as to the various species of fir or timber on the tract; is that correct?

A. Yes.

Q. Douglas fir, Noble fir, Western Hemlock, Pacific Silver Fir, Red Cedar and Western White Pine. Now, under the column entitled "Grade," would you state what those figures represent?

A. They represent the various grades of timber, the percentages of those grades of timber that our cruisers estimated in the stand.

Q. For example, where you have the item "No. 1 saw logs, 15%," that would—does that mean that 15% of the saw logs in [1022] Douglas fir out of the stand would grade out at No. 1 saw logs?

A. Yes.

Q. Or items to that effect. Then what is the column, "Sale Value Per Thousand"? Per thousand of what?

A. That is per thousand board feet, saw log sale value in the river at the nearest booming point.

Q. That would be somewhere around Hood River; is that it?

A. That would be Hood River.

Q. Under the column "Weighted Sale Value Per Thousand," what do those figures represent?

A. They represent the average value of the timber. In other words, the No. 1 saw logs, the average

(Testimony of Ralph W. Cooke.)

value per thousand in the river, multiplied by the 15% gives you your weighted value for No. 1 saw logs, and that percentage carried through on each of the grades gives you a set of weighted values which, added together, give you the average value of the timber.

Q. In other words, as to the particular species then, for example, under the Douglas fir, you calculated as an average value of Douglas fir timber \$21.76 per thousand? A. Yes.

Q. All right, referring to the second page of this exhibit, I notice there is a summary of logging costs there? A. Yes.

Q. What are those?

A. Those are our estimate of the costs that anyone operating [1023] that timber would be put to to place the saw logs in the river at the market point.

The Court: Do you use the same formulas as the BLM?

The Witness: No, I don't think our formulas are quite the same although we arrive probably at approximately the same values.

Q. (By Mr. Buell): What was the date of that item there, that exhibit? A. December 4, 1942.

Q. I am handing you Exhibit 63-H and ask you if you can identify what that is?

A. This is a summary of estimates of Section 16, Township 1 South, Range 8 East, Winans' property.

Q. Referring to the second page of that document, can you advise us as to when that was pre-

(Testimony of Ralph W. Cooke.)

pared? A. It is dated January 4, 1944.

Q. I notice that exhibit is in handwriting. Is that your handwriting? A. Yes.

Q. Do you remember what that particular summary was prepared in connection with?

A. That was prepared in connection with Lot 1 only after we discovered that the 40 acres was national forest lands.

Q. Would you advise us just as to what Exhibit 63-F is which I am now handing you? [1024]

A. That is the cruise sheets relating to the property at Lost Lake in Section 16.

Q. Mr. Cooke, did you ever have any conversation, direct conversations, with Mr. Paul Winans relative to the exchange of his timber or the timber that he claimed to own, with the Forest Service?

A. Yes.

Q. When were the last discussions or negotiations that you had with Mr. Winans? Can you place it approximately as to the year, 1943 or 1944?

A. I believe it was about sometime in 19—either late '43 or early '44 that the last conversations were had with him.

Q. Do you recall what value or what you had determined, considered to be the value of Lot 1 only in the early part of '44?

A. I believe it was around twenty-eight hundred dollars.

Q. Now, in arriving at a value of \$2,800 for Lot 1 at that time, was that based upon timber values alone, or were there other considerations?

(Testimony of Ralph W. Cooke.)

A. As I recall, we considered the value of some possible summer home sites along the lake shore.

Q. As to the summer home sites, the portion that you had considered for summer home sites, did you include the timber values on it also in addition to home site value? A. Yes.

Q. I will now hand you what has been marked for identification [1025] as Exhibit 63-C, which is a copy of a letter from Forest Service files dated September 24, 1943, addressed to Paul Winans and signed James C. Iler, Forest Supervisor, by Foster Steele, and then in the lower left-hand corner there are the initials "R. F. Cooke, R. H." Could you advise us as to who dictated or wrote that letter?

A. I dictated it.

Q. Referring to Page 2 of Exhibit 63-A, is that the—did you also dictate that letter, which is another letter addressed to Mr. Winans dated November 6, 1943, and signed the same way? A. I did.

Q. In your opinion, Mr. Cooke, what was the aggregate or total value of the 40-acre tract and the 25-acre tract in November and December of 1943 at the time of the last negotiations with Mr. Winans?

Mr. Krause: Well, your Honor, I would like to know what bearing that has upon the issues here, what it was worth 10 years ago or 50 years ago. I think we are concerned perhaps about the value in 1951, but not in 1944 or 1943.

The Court: I cannot see the materiality of that testimony, and I was wondering about the exhibits

(Testimony of Ralph W. Cooke.)

from which the witness testified. Unless he can show that the timber in 1943 was the same timber that was on there in 1951, or if he has a formula on which he determines growth plus—also infestation or spoilage. [1026]

Mr. Buell: We will have additional testimony on that, your Honor.

The Court: Perhaps this is premature. You have not offered the Exhibits yet.

Mr. Buell: I was going to offer the Exhibits. We will offer Exhibits 63-D, E, F, G, and H.

The Court: Any objection?

Mr. Krause: We do not even know what they are, your Honor. We have not copies of them.

The Court: Those are the Forest Service cruises and the appraisals made by Mr. Cooke.

Mr. Buell: Counsel have all had opportunity to examine these.

Mr. Ryan: We have not examined them, but we do not know which ones he is now referring to.

Mr. Krause: We have the numbers. But they don't give us copies. All this stuff they have had photostatic copies made, but they never offered us any.

The Court: The last Exhibits are letters which were addressed to Mr. Winans. Incidentally, you have not yet offered those Exhibits.

Mr. Buell: 63-A was offered yesterday in connection with the testimony of another witness. I was just asking, was clearing up the point as to the letter which was purported to have been sent by another

(Testimony of Ralph W. Cooke.)

man but Mr. Cooke was the one who [1027] did it——

The Court: Now, the Exhibits which you have offered are the cruising reports and the summaries made by Mr. Cooke as to the amount of timber and the value of timber in 1944 and 1943?

Mr. Buell: And that is from the official records of the Forest Service as to that particular tract, and it contains the most recent records of a cruise. I think, if I am not mistaken, they are trying to put me in the bite by saying they do not have the copies when they got whatever Exhibits over there that I furnished them at our expense.

Mr. Krause: We cannot tell, the way they are going in we cannot tell which of these papers are the ones.

The Court: Now that you know the numbers, Mr. Krause, do you want to make a statement?

As I understand it, Mr. Jaureguy, you have no objection to these Exhibits being admitted?

Mr. Jaureguy: Well, I think they are awfully remote and indirect, but I'm not going to raise any question.

Q. (By Mr. Buell): Mr. Cooke, have you been up on the Winans, what we have been referring to as the Winans tract of timber recently?

A. I have not.

Q. About when was the last time you were up there, if you could recall? [1028]

A. Oh, I imagine it may be 6 or 7 years since I have been on it.

(Testimony of Ralph W. Cooke.)

The Court: Mr. Krause, have you anything to say now?

Mr. Krause: We are making no objection to them.

The Court: All right, they may be admitted.

(Documents, letters, cruises, and appraisals, previously marked Plaintiff's Exhibits 63-D, E, F, G, and H for identification, were received in evidence.)

Q. (By Mr. Buell): Mr. Cooke, could you give us an opinion as to whether or not the footage of the particular species, according to the cruise on that property would be more or less at the present time than it was at the time of the last cruise in '43?

A. I could not because without a recent examination of the property I would not know how much has been blown down or killed by insects or destroyed by fire.

Q. Most of this timber up there is old growth; is it not? A. Yes.

Q. Is the increase in volume, or is there much increase from year to year, or in a 10-year period is there much proportionate increase in volume as a result of growth on a stand of timber of the age of the timber on that tract?

A. Yes, might be some.

Mr. Buell: I have no further questions. [1029]

The Court: Mr. Jaureguy?

(Testimony of Ralph W. Cooke.)

Cross-Examination

By Mr. Jaureguy:

Q. Over a period of 30 years, 30 or 35 years, it increases somewhere between a quarter to forty per cent, doesn't it?

A. I couldn't make a definite statement on that because there is so many factors entered into it.

Q. That is why I add an upper and a lower.

A. You have young growth timber that grow very fast. If it is on good growing ground it could grow very fast. If it is on poor growing ground, it might grow slow.

Q. Could you give me the lower and the upper limits then that you would say in 35 years?

A. Oh, it might be anywhere from zero to forty per cent.

Q. Your upper?

A. Or it might have been even a minus picture.

Q. Your upper was the same as mine, but the lower was considerably lower than mine?

A. Yes.

The Court: Why do you take a figure of 35 years, Mr. Jaureguy?

Mr. Jaureguy: This particular one is only 7 or 8 years. I can tell you, your Honor, if your Honor won't scold me, that they have some evidence here of something that was done in 1915 and I was merely anticipating that so I would not have to call him back and question him later. [1030]

(Testimony of Ralph W. Cooke.)

The Court: All right, go ahead. Any further questions?

Q. (By Mr. Jaureguy): There are a lot more of these exhibits that you have not even shown me, but I assume that you are going to go into those later.

Mr. Buell: In the Forest Service file?

Mr. Jaureguy: I don't know where.

Mr. Buell: There are more exhibits in the Forest Service file but there is none that we propose—

Mr. Jaureguy: The rest of the file you are not proposing to show? Is there anything in here that he knows anything about?

Mr. Buell: There might be. I don't know of anything in it of any particular materiality, however.

Q. (By Mr. Jaureguy): Did you have negotiations with Mr. Winans about the exchange of this timber with the Government? A. I did.

Q. Did you have discussion with him as to the title to the 40 acres?

A. I did. I believe I had one discussion with him after we notified him by letter that the 40 acres was National Forest.

Q. When was the notification by letter?

A. I believe it was in late '43.

Q. Had he called at—had he ever discussed with you the question of the title prior to that [1031] letter? A. No.

Mr. Jaureguy: I do not think there is anything more.

(Testimony of Ralph W. Cooke.)

Mr. Ryan: No questions.

The Court: How did you discover that the title to the back forty was in doubt?

The Witness: Checking with the General Land Office records, they showed there had never been a patent issued to that forty.

The Court: When you called it to Mr. Winans' attention, did he tell you that he was aware of that fact?

A. I can't recall that he did. I am not sure that he was aware of the fact until the time.

The Court: Mr. Krause, are you going to interrogate?

Mr. Krause: Yes, I think we ought to have these letters shown to the witness because—I think it is Exhibit 63.

Mr. Buell: That little hand-written memorandum?

Mr. Krause: Well, I want that and also the letter which was written in January and not in December as the witness said.

Mr. Jaureguy: He did not say December. He said the latter part of 1943.

Mr. Krause: Well, I will put that as late as I can, in December, but it was written in January of the next year.

Mr. Jaureguy: Well, I think that you and the witness are not talking about the same thing. [1032]

(Testimony of Ralph W. Cooke.)

Cross-Examination

By Mr. Krause:

Q. Mr. Cooke, apparently the discussions in your office with Mr. Winans were held by Mr. Steele rather than yourself?

A. Discussions with people who come into the office are, may be held by anyone in the office who happens to be in at that time.

Q. Well, here is a memorandum addressed to you, Ralph, initial S, which says that in October of that year, Mr. Winans and Mr. Steele already discussed this matter of the defect in the title, will you examine the exhibit, please?

A. Yes, apparently this exhibit is in Mr. Steele's handwriting, and it is addressed to me. However, it is October, 1923, and he apparently didn't put in——

Q. Well, that came out of your file—in 1943, that is, it came out of your file, the Forest Service file, in connection with other letters that were in October, 1943.

The Court: Have they been admitted in evidence?

Mr. Krause: That is in evidence.

The Court: Why don't you admit the—I mean offer the other letters?

Mr. Krause: Well, I just want to point out that, of course, we could stipulate this because the file shows, but let us see if we can agree on this, and we do not need it: That on December 6, 1943, the

(Testimony of Ralph W. Cooke.)

Forest Service here asked for [1033] a status report on those 40 acres; that they wrote to Washington, D. C., from the Portland office asking for a status report and then on December 13, 1943, Ira J. Mason here in the Portland office wrote to the Forest Supervisor, Mt. Hood Station, that they had requested such a status report. That is under date of December 13, 1943, and this letter advises the Forester up there not to discuss the matter further with Winans regarding exchange until they get a report on the status of the 40 acres.

Mr. Jaureguy: Let me see that.

The Court: Who are you asking to stipulate?

Mr. Krause: Well, I think we had better forget the stipulation and just admit these in evidence.

Mr. Buell: No objection.

The Court: Is there any objection to these letters?

Mr. Buell: No objection to them.

The Court: They may be admitted.

Mr. Krause: There is one more letter. That is this letter of Paul Winans, November, 1943, to Mr. Iler, Forest Service Supervisor, Mt. Hood National Forest, and Mr. Iler's reply under date of December 6th of discovering that flaw in the title.

The Court: Any objection?

Mr. Buell: No.

The Court: It may be admitted. Have they been marked? [1034]

Mr. Lindsay: They are all part of this file.

The Court: Just call them I and J.

(Testimony of Ralph W. Cooke.)

(Documents previously referred to marked Plaintiff's Exhibits 63-I and J for identification and received in evidence.)

The Court: Any further questions to Mr. Cooke? If not, that is all, Mr. Cooke.

(Witness excused.) [1035]

LYLE A. CUMMINGS

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. What is your occupation?

A. Forester.

Q. By whom are you employed?

A. I am a partner in the firm of Mason, Bruce and Girard, Consulting Foresters.

Q. Offices in this city?

A. In the American Bank Building.

Q. How long have you been engaged in that occupation?

A. I have been with the firm of Mason, Bruce and Girard for two years. I have been a forester somewhat longer.

Q. Where did you get your training in the forestry work?

A. I spent 10 years with the United States Forest Service previous to joining the firm of Mason, Bruce and Girard.

(Testimony of Lyle A. Cummings.)

Q. Do you have any college training in forestry?

A. Yes, I have a Bachelor of Science degree from Oregon State College.

Q. Mr. Cummings, did you at my request examine the timber located on the northeast quarter of the northwest quarter in Section 16, Township 1 South, Range 8 East, and also Government Lot 1 of that same section and township? [1036]

A. I did.

Q. I will ask the crier to hand you Exhibits 19 and 20.

Did you, following the making of such an examination, make a report to my office as to the timber located on that property and the value of the timber? A. Yes, I did.

Q. Will you tell us, Mr. Cummings, when it was that you made this cruise?

A. Well, I would say about the middle of November. If I can look here on this exhibit I can probably give you the date.

The Court: Why don't you ask him how he made the cruise and what he found, and with whom he made it; offer the exhibit and then offer him for cross-examination, and I think we will get along very fast.

Mr. Buell: That is what I propose to do.

How long did you take to make the cruise?

A. I believe we worked about two and a half days on the area.

Q. That is on the property? A. Yes.

(Testimony of Lyle A. Cummings.)

Q. Would you go ahead and just make a description of exactly how you went about making the cruise, how many of you there were making it or assisting you on it, and the length of time it took and the results you reach? In other words, just state [1037] in your own words what you did and found.

A. All right. We drove up to Hood River in the afternoon previous to working in this area and drove to Parkdale and talked to the Ranger at the Government Ranger Station there, Forest Service Ranger Station; inquired as to how to get to the tract and how far it was, what the roads were like, and so forth. Then next morning we proceeded to the area and had no difficulty in finding the property; went to the north quarter corner of the section in which these areas are located and started our cruise. When I say "we," I did the work myself. I was assisted by a compass man who just helps to run the lines and so forth, do some of the measuring and so forth. We worked on the two properties simultaneously; however, as we do our work we keep our records independent, one forty from another or a forty from a lot, and so on. In making our cruise, we cruised the tract eight times. We made what we call an eight-run 40% cruise. Oftentimes we will make a hundred per cent cruise or a 40% cruise or a 20% cruise customarily, and, of course, less on short properties down to ten and five and so forth, but, as a rule, on properties even being of a different size and different

(Testimony of Lyle A. Cummings.)

nature, we design the cruise individually for that property. So we cruise on a basis of 40% of the area. In other words, we estimated, measured and estimated each tree on 40% of the entire tract, and following our field work we returned to Portland, and from the result of our [1038] individual figures that we got from each plot, as we did our work, we would calculate the volume by species of the timber on the tract.

Q. I don't know whether I didn't hear or not, but did you state whether or not you counted the trees in plots of how large a diameter?

A. I didn't state, but what we do, we start on lines uniformly spaced on a tract, and we take our plots along those lines. It is a mechanical spacing process. In other words, we set forth a certain distance, 165 feet as an example, and then we start a line north or south or whatever direction we are going, and along those lines at uniform distances we take our sample plots. Sample plots are quarter-acre plots. On those sample plots we make a careful examination of each tree. We check the diameter; we measure some of the trees; some we estimate as to the diameter, and we also check the heights, and we check those trees for defect and breakage, and on each fourth plot along these lines we grade the trees that fall on the plot for grading purposes in determining the value.

Q. By grade you mean the grade of logs that will come out of that particular tree?

A. That is right.

(Testimony of Lyle A. Cummings.)

Q. How far apart are those quarter-acre plots on your lines?

A. On this ground they were 165 feet. In other words, [1039] there was a plot each 165 feet on the coordinates on the entire tract.

Q. In your lines on this tract, did you go on an east-west line?

A. Yes, we did, we ran east and west on this.

Q. Running clear through from the shore line of the lake to the west line of the 40-acre tract?

A. That is right.

Q. Did you also, in making the cruise, segregate the timber on the 25-acre tract as to a north and south division line of that tract?

A. Yes, we did.

Q. How did you locate the division line?

A. There is a line, a well-placed line between the northeast quarter of the northwest quarter and the lot——

Q. Was that line staked?

A. There were some small stakes. I don't know what the small stakes represented. It indicated that someone went through there, apparently with a transit or a level, and these were just small stakes used in that process, but the line was quite clearly placed. By places, I mean marks on the side of the trees made by an axe.

Q. Did you have a copy of the deed with the description of the lines segregating the 25-acre tract on it?

A. Yes, I did. [1040]

(Testimony of Lyle A. Cummings.)

Q. Did you survey that line in establishing where you were?

A. No, when we are doing this cruising work, we will start from a corner so that we are sure that our location is proper. Then we work from there, and a line apparently ran south from the quarter corner to that property corner to the south one-quarter mile.

Q. Then what was the total volume of timber that you found, merchantable timber that you found on the entire tract of the 40-acre and 25-acre tract?

A. 2,893,000 board feet.

Q. What was the total volume of defective or cull timber that you found?

A. Well, I have on the two tracts, one of them I have 1,274,000; on the other 549,000, which would be somewhere in the neighborhood of 1,800,000 of cull.

Q. What was the general nature of the defects which you found in the timber which you classified as culls?

A. This stand that is in question is quite an old stand, and a large part of the volume was made up of very old and over-mature Western Hemlock. These old hemlock trees, in quite a great portion of them, had broken tops, and others had these large shelf-like conks growing out to the side. A conk is a fruiting body of fungus which decays the interior part of the tree, and every one of those trees had rotted areas around the trunk. [1041]

Q. Are you still referring to hemlock?

(Testimony of Lyle A. Cummings.)

A. Yes, the hemlock, of course, was the most defective species in the stand. The Douglas Fir and, well, all the trees that holds true to a certain degree, only that the hemlock is subject to rot more rapidly and to a greater extent than Douglas Fir, the White Pine, and the other species on the area.

Q. Is that document that you have been referring to the report that you rendered of the results of your examination of this property?

A. Yes, it is.

Q. Did you conclude what would be the reasonable value of the timber on that property as of September, 1951?

A. Yes, I did.

Mr. Buell: We will offer Exhibit 19 in evidence.

Mr. Jaureguy: I make no objection but I want to see it. I have what purports to be a copy made in our office, and I want to see if there was a little mistake made in it.

Q. (By Mr. Buell): What is the figure that you concluded was the value for the entire tract as of that date?

The Witness: I would have to see the report.

The Court: It is \$45,172, and the Government lot is \$25,347. That leaves a little over \$11,000 for the Winans property.

Mr. Buell: I think the Court mis-read [1042] that.

Q. (By Mr. Buell): Will you hand the exhibit back to the witness, please?

Mr. Cummings, referring to the \$45,000 figure as

(Testimony of Lyle A. Cummings.)

the aggregate value of the entire tract, that was for the entire 65.88 acres; was it not?

A. Yes, it was.

Q. Then did you conclude what would be the value of the 40-acre tract alone at that time independently of the 25-acre tract, Lot 1? A. Yes.

Q. What did you conclude the value of the 40-acre tract to be? A. \$25,347.

Q. Then what did you conclude the value of the entire north half of the Government Lot 1 to be, taken by itself independently of the 40-acre tract?

A. \$9,000.

Mr. Krause: Your Honor, may I make an objection there? As I understand it, this relates to the timber only. Counsel is continuously asking as to the value of the property. Now, is he testifying as to the value of the land or value of the timber?

Mr. Buell: The witness is testifying as to the value of the timber, as I understand it.

Isn't that correct? [1043]

The Witness: That is correct.

Q. (By Mr. Buell): What did you conclude as to the value of the timber in the north part of the Government Lot 1? A. \$9,513.

Q. And the value of the timber on the south part of Government Lot 1? A. \$1,854.

Q. Now, those last three figures that you mentioned do not add up to a total value of \$45,000 which you computed for the entire tract, and would you explain the reason for that?

A. The reason for that, a value of a tract of

(Testimony of Lyle A. Cummings.)

timber depends a great deal on the quantity—manner in which it can be logged. Now, the theory here was that on the quarter section alone or on the tract as a whole it might be logged as a rather large operation, and certain roads could be built to take that out. Now, on the smaller tract here, the only way that I could see it could be logged would be on a small gyppo operation where it would be necessary for some small operator to come in and take out a few logs, and there is a possibility that he could take them over the existing roads.

I might add that on the large tract it was my understanding in talking to the Forest Service gentleman, Ralph Cooke, and some of the others, that the entire tract of timber, or the bulk such as would be represented on the northeast [1044] quarter, could not be removed over the recreation road through the recreation area on the south—the north end of Lost Lake and out through by the Guard Station and down, and that quite a piece of expensive road would have to be required in order to remove it, so that was taken into consideration on the larger tracts.

On the smaller tracts, one man, or just a few men, probably could be employed and short logs removed in a small truck and he would probably maybe have to haul his logs at night or during the middle of the week so it would not interfere with the recreation traffic to Lost Lake, if at all.

Q. One other sign question, Mr. Cummings, and that is, did you observe any United States Forest

(Testimony of Lyle A. Cummings.)

Service signs located along any boundaries of that 40-acre tract while you were up there?

Mr. Jaureguy: Objected to as incompetent, irrelevant and immaterial.

Mr. Buell: Ranger Holtby had already testified that there had been no additional Government signs placed on the property since the time of this——

The Court: All right, objection overruled. I will admit it.

The Witness: There were Bull Run Water Shed Reserve signs, Government signs along the line between the 40-acre tract and Government Lot 1. [1045]

Q. (By Mr. Buell): About how many; do you recollect?

A. I couldn't say. As we proceeded with our work, we came up to the line, first from one side, then from the other, and I couldn't say, but I saw several.

Mr. Buell: Was there any objection to the receipt of the report in evidence?

Mr. Jaureguy: No.

The Court: It may be admitted.

(Document, report of Mr. Lyle Cummings, previously marked Plaintiff's Exhibit 19 for identification, was received in evidence.)

(Testimony of Lyle A. Cummings.)

Cross-Examination

By Mr. Jaureguy:

Q. Isn't that property all water reserve whether it is Bull Run Water Reserve, whether it is Government property, or privately owned?

A. I couldn't say.

Q. Is it your understanding that a logger could use that recreation road without permission of the Government?

A. No, I don't think he could use it without permission of the Government. I am not familiar with that.

Q. Do you know whether or not they are permitted to go over those roads at night?

A. I do not know. [1046]

Q. Isn't it a fact that if they were going to log the entire area they could build a road that would, a short road that would enter in along toward the west part of the 40-acre tract and then approach the smaller tract from the 40-acre tract?

A. Yes, they could.

Q. That would be the way to do it if they were logging it at all?

A. From my very brief discussions with Ranger Holtby, I understood that a road could be laid in there coming around behind or to the west of the recreation area.

Q. If a person owned the 40 acres?

A. Yes, if a person had the 40 acres, owned the entire tract.

(Testimony of Lyle A. Cummings.)

Q. But if a person did not have the 40 acres and couldn't approach the smaller tract through the 40-acre tract, then I would think that the only way he could do it would be by the recreation road; that is it, isn't it?

A. I couldn't say as to that. There may be other possibilities which I am not familiar with.

Q. But the only possibility which you explored and are testifying about, if a person had only the smaller tract, would be by the recreation road; is that correct?

A. Yes, a previous road. In other words, this tract is so small that you couldn't spend sixteen or eighteen thousand [1047] dollars building a road to it.

Q. If you could spend all that, where would you put the road unless you got permission to put it through the 40-acre tract?

A. Well, I suspicion that you could enter Government Lot 1 near the northwest quarter of that Government lot, if you wanted to spend that kind of money to build that access road into the area.

Q. Would it be worth while? You say it would not be worth while?

A. Well, it didn't appear so to me. The total value of the timber would not be as great as the cost of the road.

Q. It would not be as great, you say?

A. That is right.

Q. After building that road, where would that road connect on to a public highway?

(Testimony of Lyle A. Cummings.)

A. That road would go to the west—would go to the north from this timbered area, and then swing to the northeast and cross the fork of the Hood River and join in with the recreation road approximately a mile north of the Guard Station.

Q. That would have to go across Government land?

A. I don't believe that you would have any problem in crossing Government land. I don't believe anyone else has unless it is a reserved recreation area or some special use area. That is my understanding. [1048]

Q. But the road you were speaking of would have to go across Government land?

A. I expect it will. I believe this is all Government-owned up there except for a few small tracts.

Q. But in logging this small tract, if you had to go across Government land, you say without using recreational roads?

A. Well, yes, if you wanted to spend enough money I think you could build a road.

Q. Across Government land?

A. Well, I couldn't say as to whether it would be across Government land. It is my thought that it probably would because I understand that the greater part of the area up in there is Government-owned.

Q. I show you Exhibit 110. Assuming that in this exhibit Metsker is correct——

The Court: I believe the witness has testified the total value of the timber as \$11,367 and that the

(Testimony of Lyle A. Cummings.)

cost of the road would be around \$16,000, so why is it necessary to pursue all these possibilities?

Mr. Jaureguy: Well, I think that this possibility ought to be pursued in the event that other witnesses testify that the value of the timber is much more.

Mr. Buell: I think, if the Court please, that he testified that the large access road through the 40-acre tract [1049] would be an expensive one, but for the purpose of a small operation to take out the timber on the north half of Government Lot 1, they could make use of the existing way trail with a small operation.

The Court: He says he does not know. That is an assumption he makes.

Mr. Buell: That is an assumption that everybody connected here has to make, that access would have to be obtained into the property.

The Court: You mean you would use the Government recreational road to get into the smaller tract, you could use that without any cost? That is the assumption that he has made, but he does not know whether that is a correct assumption or not, and he so testified.

Mr. Krause: Well, it does not say without cost, your Honor, because he is allowed certain road costs in connection with all of these estimates.

The Witness: That is right.

Mr. Krause: Even on a Government road it would mean rocking the road, something of that sort.

(Testimony of Lyle A. Cummings.)

The Court: Am I correct in my statement that you have not verified whether or not the Government recreation road could be used even early in the morning or late at night?

The Witness: No.

The Court: You have just made that [1050] assumption?

The Witness: I have assumed that the timber in there, that the owner would be allowed to remove his property if you abide by certain regulations. I just made that assumption on the basis of past knowledge.

Mr. Jaureguy: Could I get that exhibit?

The Witness: Is this the one you wish? (Presenting document.)

Mr. Jaureguy: The witness has it.

Are these pages numbered?

A. Well, no they are not. This refers to the Government Lot 1.

Q. This Lot 1, this is the sheet that I have here which gives the number of feet of each species?

A. Yes.

Q. You have Douglas Fir 160 and then the word "thousand"? A. Yes, that is correct.

Q. But do you give—what is that? Did you find any Douglas Fir on the Lot 1 that you would grade as peelers?

A. We grade our trees on the first and on the fourth plot, and the grades that apply to that timber are these grades here.

Q. This, however, is the 40-acre plot only?

(Testimony of Lyle A. Cummings.)

A. Yes, the timber is very similar, and as we ran our lines we took our grade plots as they fell. In other words, if you didn't do that, you would find bias in your grades.

Q. But on this next sheet which goes on that Government lot, you have white fir graded. Why did you grade that there? [1051] I do not quite understand it.

A. Well, the white fir fell on our grade plot. The mechanics of grading, we grade each fourth plot, and if a Douglas fir tree does not happen to fall on that plot, although there is one on that plot before and the plot afterwards, we still do not change our grading procedure.

Q. So that you would say that this sheet, that where the top portion of it only refers to the 40-acre plot, the bottom portion of it where the grading is refers to all the timber on both plots?

A. The Douglas fir, yes.

Q. But the white fir would be the white fir. You have got 44% No. 2 and 56% No. 3 there, and on the next sheet you have white fir 48% and 52%.

A. That is right, the white fir, that is just the way it fell on our plots. We graded the trees that fell on our grade plots.

Q. Why did you segregate the grading for the white fir and not for the Douglas fir? That is what I can't understand.

A. Well, you see, we didn't segregate necessarily. We would grade on the first plot—we grade on the fourth plot and the eighth plot and so on in that order, twelfth and sixteenth, and, you see, 160,000

(Testimony of Lyle A. Cummings.)

does not represent very many trees, and even though—you see, that volume of our sample, our sample included instead of 160,00 it included 40% of [1052] 160,000 because when we completed our grades, we multiplied our volume cruise by two and one-half times since it was a 40% cruise.

Q. Then what portion of the plots that you cruised did you grade?

A. That is one out of four.

Q. So that would be 10%. Only on 10% did you do any grading? A. That is right.

Q. Now, you found these peeler logs—do you make a distinction between peelers and peelable logs?

A. Well, no, peelers, we follow the Columbia River Bureau Log Grading and Scaling Rules. That is recognized in this area and we use those rules for our grading.

Q. But the plywood manufacturers have a distinction, have they, between peelers and peelables, have they?

A. I think they do; however, it is my understanding they are not bought and sold on that basis.

Q. Well, are they not like other commodities? You bargain to buy them as cheap as you can and sell them at as good a price as you can?

A. I should think that would be correct.

Q. In the southern portion of Lot 1, you found that swampy land? A. Yes.

Q. And you found—well, I guess this does not tell you— [1053] you said you have 5% of hemlock for No. 3 peelers? A. Yes, the peelers.

(Testimony of Lyle A. Cummings.)

Q. That is all you could find is 5% of those?

A. Yes.

Q. No No. 1, no No. 2, some No. 3?

A. In the grading, hemlock was graded only on our group, in other words only one grade of peelers in the 12% saw logs.

Q. What about Noble fir?

A. Noble fir is the same.

Q. Is that what is sometimes known as larch?

A. That is the true name, is larch, but it is the Noble fir tree, quite different from a larch tree.

Q. Quite different from Douglas fir?

A. Yes.

Q. Do the plywood manufacturers regard the Noble fir peelers as good, merchantable products and in demand?

A. Not particularly at this time. During the war they were considered an emergency tree to fill in behind the spruce for airplane construction.

Q. At the price that you put down here for No. 1 peelers, what would you say the final cost would be delivered in Portland? Did you figure that out?

A. No.

Q. Would you say it would be as much as \$80?

A. The cost, I don't get the—— [1054]

Q. The final cost, including stumpage, of No. 1 peelers, delivered in Portland, if a person bought this tract of timber?

A. Including stumpage and everything?

Q. Yes.

A. Well, may I see the report, please?

(Testimony of Lyle A. Cummings.)

Q. Yes.

(Exhibit presented to witness.)

A. In my work I did not separate the costs by grades. We do, as Mr. Cooke mentioned, we have a weighted figure by species, and that is what we use in making our——

Q. Well, is there any difference in the cost other than the stumpage, in the better grades and the poorer grades?

A. No, but there is a difference in the selling price on that market.

Q. That is what I am getting at. The values that you have put on there are stumpage values, stumpage per thousand? A. Yes, that is right.

Q. And in order to figure stumpage values for Douglas fir, you have to figure the value of the peelers, do you not? A. Yes, I did.

Q. So you cannot tell us what the total cost would have been delivered in Portland of these logs?

A. No.

Q. Either peelers or Douglas fir generally?

A. No. [1055]

Q. Or of any of the logs?

A. Not delivered in Portland.

Q. You were with the Government service for some little time, as I recall? A. Yes.

Q. Were you up in this particular district?

A. I was. The most of the time that I spent with the Service was spent on what is now the

(Testimony of Lyle A. Cummings.)

Gifford Pinchot National Forest, and it is about, oh, 20 miles almost due north of this area, maybe twenty-five.

Q. In connection with this particular cruise, did you have occasion to examine the Government cruises on this particular property?

A. No, I did not.

Q. Or to examine any area cruises?

A. No, I have not.

Q. You just went up there to find out how to get to this property?

A. That is all, yes. So far as I know, they do not have the cruises at Hood River, or, I mean, Parkdale. At least I was not shown them, and, of course, I didn't inquire. We do not look at other people's cruises until we have ours done if we are going to make any comparison at all.

Q. This cruise that was made by you was made at the request and expense of the Title and Trust Company? [1056]

A. Yes, through Mr. Buell. He employed us.

Q. Yes, for use in connection with this case?

A. So far as I know, yes, I am sure that is right.

Mr. Jaureguy: That is all.

The Court: Recess until one-thirty.

(Recess taken.) [1057]

Afternoon Session

February 4, 1953, 1:30 P.M., Trial Resumed

LYLE A. CUMMINGS

recalled, testified as follows:

Cross-Examination

By Mr. Krause:

Q. Mr. Cummings, in order to check back on these stumpage values here, we would have to have the sales price or the value of the logs at some point here, wouldn't we? A. Yes.

Q. At what point did you take the values of these logs for the purpose of this cruise?

A. The Columbia River.

Q. Where is the point?

A. It would be at, probably at Hood River.

Q. At Hood River?

A. Because that is the most, that is the nearest place.

Q. Well, was there a log market at Hood River that you could take, that is, the price on different logs and so on as a——

A. I used the values from the "Timberman" given for this month, for that month.

Q. They gave you the value for these different types of logs at Hood River?

A. In the Columbia River, which I used.

Now, it is my understanding that that price is used along the river, but there is certain towage charges that would be [1058] incurred to move them from Hood River to Portland.

(Testimony of Lyle A. Cummings.)

Q. Can you give us those figures now? Do you have them with you?

A. I do not have the report. Which figures was it that you were interested in?

Q. They are not in your report. Well, we would be interested in all of them because net stumpage values here do not mean a thing unless you know what you are selling the logs for; isn't that right?

A. That is right.

Q. If you sell them for ten dollars more, your stumpage prices are ten dollars low.

A. Now, in my case I have the "Timberman," from which I took the log selling prices quoted at that time.

Q. That is the "Timberman" for what month?

A. Let's see, September and October are the two that I used of 1951.

Q. Two issues of the "Timberman"?

A. Yes.

Q. September and October? A. Yes.

Q. 1951? A. Yes.

Q. There was a ceiling on logs at that time, wasn't there?

A. I do not know, but the quoted price is what I used. [1059]

The Court: What was No. 1 saw log, Douglas fir?

The Witness: I would have to get my case with the "Timberman" in it, but I could tell you that I do not have that. What I have here on this ap-

(Testimony of Lyle A. Cummings.)

proximately is the average log price based on the grades that I found in the weights.

The Court: Is there a formula that shows that if there is 20% No. 1 peelers, the price goes up 15%?

The Witness: Not to my knowledge.

The Court: In other words, the prices that you used indicate that there is no difference depending upon the amount of peeler logs in the stand?

The Witness: No, that is not quite true. You see, we decide, determine the amount of logs or grades. Then we use a weighted selling price by percentage, as Mr. Cooke explained.

Say you have 10% No. 1 peelers, and your peelers are selling for a hundred dollars. Well, 10% of your price for your average selling price would be at the hundred dollar rate. In other words, then, \$10 would be the portion that the No. 1 peelers would represent. If there was 30% No. 2 peelers, it would be 30% of the \$80 or \$90, whatever would be No. 2 peeler price, and that way you would arrive at an average selling price for a particular stand of timber. It would be different for all stands. No two would be identical.

The Court: What figure did you use for the falling and bucking? [1060]

The Witness: \$4.25 a thousand.

The Court: How much for yarding?

The Witness: \$5.60 yarding and loading, I have it.

The Court: How much down to the boom at Hood River for hauling?

(Testimony of Lyle A. Cummings.)

The Witness: \$5.66 a thousand.

The Court: So you had at that time—what other costs did you put in there?

The Witness: I had slash disposal, \$2.00; depreciation and other costs, \$3.00 a thousand. That gave me a total logging cost of \$29.50.

The Court: \$29.50?

The Witness: Yes.

The Court: You had \$4.25, \$5.60, \$5.66, \$2.00, and \$3.00?

The Witness: I have a development cost of \$8.99.

The Court: Is that for a logging road?

The Witness: That is for a logging road, yes, construction and so forth, culverts or bridge, whatever is necessary.

The Court: All right, Mr. Krause, go ahead.

Q. (By Mr. Krause): That \$8.99 a thousand would be against every thousand feet that you took off of the full 65 acres?

A. Yes, that is right.

Q. These prices are on the basis of logging the entire tract off at once?

A. Yes. [1061]

Q. The two parcels?

A. That is right.

Q. In your segregation of the merchantable from the cull, you also determined the stumpage price on the cull, I suppose?

A. No.

Q. That you threw out?

A. Yes.

Q. Well, this 1,800,000 of cull, that was not regarded as having any value up there?

A. No.

(Testimony of Lyle A. Cummings.)

Q. Would you fall and buck it in the first place, even though you were not going to use it?

A. No, you probably would not, and the thought is that if you did fall and buck that you probably would not any more than recover your costs on your material because we use as a guideline there for cull 50%. If it is 50% rotten, then we cull it out entirely. It is pretty much standard practice in cruising.

Q. Well, then certainly your development costs for \$8.99 per thousand would not have been applicable to this cull? A. No.

Q. That would only be applicable to the merchantable timber? A. That is right.

The Court: In other words, if 50% of the tree or more is cull, then you do not count the tree at all?

The Witness: That is right, we throw it out. We make a [1062] gross estimate as we did here to give a person interested an idea of how much cull material there is involved.

Mr. Krause: I have nothing further.

Redirect Examination

By Mr. Buell:

Q. Mr. Cummings, we have been referring to the entire tract; however, in your cruise of the southern part of the 25-acre tract, I believe you only came out with a very—\$1,800 in value, did you not?

A. Yes.

Q. Now, in determining the values, or rather, in determining the costs of logging and developing the

(Testimony of Lyle A. Cummings.)

tract for the purpose of logging the 40 acres and the north half of the 25-acre tract, would the question of whether or not the timber on the southern half of the 25-acre tract were available make any appreciable difference in the cost?

A. No, very little. The volume there is so small that it would influence it very little.

Q. There has been quite a bit of discussion of this question of arriving at a price on the basis of logging costs and the market value of logs in the river. However, is that the only basis upon which you arrived at your opinion as to the value of the timber on this property?

A. No, in making a valuation, it is customary to check other sales of similar timber in the immediate area, which we have [1063] done, and it is a part of the—one of the exhibits I have here. Our firm keeps a record of sales that take place in this region in particular and some other regions, too, of the amount that is sold and who the buyer is, who the seller is, and so forth, the material of which is reported on these cards so we weigh that in making any valuation.

The Court: Have you ever compared your figures to those of the Forest Service or Bureau of Land Management on various tracts?

The Witness: No, I have not.

The Court: You do not know how your valuation compares with theirs, as to whether it is higher or lower?

The Witness: Well, of course, since I was in

(Testimony of Lyle A. Cummings.)

the Forest Service for several years, I am inclined to follow along those lines, you see, but we do not make a direct comparison.

Usually, when we make a valuation for somebody, well, that is it, and we have made quite an investigation when we make that so we do not compare it with other agencies.

The Court: Do you use the same formula now that you used when you were in the Forest Service?

The Witness: Very similar.

The Court: Have you watched the prices and the paid price and the appraisal price of Forest Service lands in the last year or two?

The Witness: Yes, I have. [1064]

The Court: Isn't it a fact that that sold from two to three times more than the appraisal?

The Witness: Yes.

Q. (By Mr. Buell): Mr. Cummings, one other question here regarding the age of this stand of timber. This is all old-growth timber on the property; is it not? A. Yes, it is.

Q. Could you express any opinion as to the percentage of growth over a 6-year period of that stand of timber? In other words, as to what the growth would be from, say, 1944 to 1950?

A. No, I do not believe I could.

Q. Well, timber of that age, does it increase much in volume per year?

A. Ordinarily, no. That is a very old stand.

Q. During what years of growth of timber does the greatest increase of volume occur?

(Testimony of Lyle A. Cummings.)

A. On a good site, timber increases very rapidly in volume up until about 90 years. That is Douglas fir I am speaking of. A young stand of Douglas fir, up until about 90 or 100 years, grows quite rapidly, and at that point, then your growth tapers off until you do not receive sufficient revenue from that timber to let it stand, but as a guide-line, it is better to harvest young timber at that age. That is, you have gotten a maximum production per year, and on the older timber the growth is very small. [1065]

Q. Does a defect in a particular stand of timber begin increasing generally at any particular point of the age, with reference to the age of timber?

A. Well, only this way, I believe I could answer that, is that a very old stand would have, would be more subject to defect, and the defect would be present in greater amounts in a very old stand than it would in a younger, more thrifty stand.

That is about the only way I could answer that question.

Q. The timber involved in this property here is at a fairly high altitude, is it not?

A. Yes, I would not say what the altitude is without checking. It is a higher elevation type.

Q. Is not the fact that it is located where it is, isn't there a lesser amount of growth per year at an elevation such as that at Lost Lake than at a lower elevation?

A. Well, the site would have a big bearing on

(Testimony of Lyle A. Cummings.)

it, and I couldn't—I don't believe I could answer that question.

Q. With reference to the defects that you mentioned and which you stated were limited mostly to the hemlock timber on the property; is that correct?

A. Yes, that was the most defective.

Q. Then, is that defect something that you could observe in a casual wandering through the woods, or do you have to actually go up to the tree and look at the tree carefully in order to determine whether or not the tree is, as you say, 50% or more [1066] cull?

A. There are certain things you can observe just walking through the woods. You can see the tops broken out of a large number of trees and you can see these big shelf-like conks on quite a number of the trees, but in order to make an estimate of the defect, it is actually necessary to walk around the tree and look at it because there are other things involved. A check alongside a tree many times indicates that rot has gone in on a seam, and there are checks and cracks on a piece of some hemlock which indicate that they are rotten inside.

The Court. You say that there was quite a bit of infestation among the hemlock?

The Witness: Yes.

The Court: What was the rate of infestation in the Douglas fir?

The Witness: Not nearly as much as in the hemlock. It is resistant to the rot a great deal.

The Court: The infestation of hemlock in that

(Testimony of Lyle A. Cummings.)

area does not make very much difference, does it, because of the low value of the stumpage? You only gave it a value of \$1.00 to \$4.00, didn't you, on some of these stands? For instance, on the Government Lot 40, Table II, you only gave the hemlock and Noble fir, you only gave a value of \$1.00, so even if the whole thing was infested, it would not amount to more than \$785, would it? [1067]

The Witness: Well, you see, you have already reduced those values by all these other factors of logging costs and so forth. It has paid its way out as far as that is concerned. Then there is the profit and all these other things have already been counted.

The Court: Now, loggers use trees that are 50% cull, do they not?

The Witness: Yes, sometimes.

The Court: And that is their additional profit?

The Witness: Well, yes, if there is additional profit. Sometimes you will fall a tree that is a cull, and you won't get anything out of it. The next time you fall one you might get a thousand feet from it. You see, when you are dealing in cull trees you are fortunate if those trees will pay their own way, if they will pay the expenses that will be charged against them before they get to market.

The Court: If a tree is 55% good, you give it a value; if it is 45% good, you do not give it any value?

The Witness: That is right.

The Court: Various cruisers may differ as to whether a tree is 50% good or not?

(Testimony of Lyle A. Cummings.)

The Witness: Oh, yes.

The Court: And a difference of 15% to 20% is not unusual among cruisers?

The Witness: Well, in the more defective stands I think [1068] that would be true. In the better, thriftier stands, I don't think there should be that difference.

The Court: Any further questions?

Q. (By Mr. Buell): One further question, Mr. Cummings. With regard to the percentage of defect, if you find a particular tree is, as the Court indicated, say 55% or 60% merchantable and 40% was defective, in calculating your total footage, do you calculate just 60% of the tree or do you consider the whole tree as merchantable insofar as totalling your gross volume of timber?

A. No, our volumes indicate net volumes. In other words, if a tree was 40% defective, we would give that tree only 60% of its gross volume.

Q. Then could you give us your opinion, Mr. Cummings, as to the reasonable value of the timber on that entire tract as of September, 1951?

The Court: I think he has already testified to that, \$45,172.

Mr. Buel: I think that the question there didn't include the term "market." I thought it was covered, but I wanted to make sure of it.

The Court: Is that correct?

The Witness: That is correct, yes.

The Court: Any further questions?

Mr. Buell: I have no others. [1069]

(Testimony of Lyle A. Cummings.)

Mr. Ryan: None.

Mr. Krause: None.

Mr. Jaureguy: No.

The Court: That is all.

(Witness excused.)

Mr. Buell: May it please the Court, we intend to offer also Exhibit Number 20, which was the, contains the notes of Mr. Cummings.

The Court: It may be admitted.

(Envelope, containing correspondence and timber sale record cards, previously marked Plaintiff's Exhibit 20 for identification, was received in evidence.) [1070]

THOMAS GUNNESS

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Gunness, you are employed by the First National Bank of McMinnville, are you not?

A. I am.

Q. Were you employed there in 1951?

A. Yes, sir.

Q. What is your position there?

A. Assistant Cashier.

Q. Can you talk a little louder?

A. Assistant cashier at the present time.

(Testimony of Thomas Gunness.)

Q. Now, during 1951, we understood here that Chet and Lois Parker had an account there, or had two accounts there, one in their names of Chet or Lois Parker, and another in the name of Phillips Construction Company; is that correct?

A. Yes, I don't know. I don't recall just offhand when Phillips Construction Company was opened.

Q. Did Walter Stegmann have an account at the bank during 1951?

A. I am certain he did not.

Q. Do you know how long it had been since he had had an account there?

A. As I recall, as I know, he didn't ever have an account [1071] there, so far as I know.

Q. Mr. Gunness, how do you pronounce it?

A. Gunness.

Q. Gunness, and Mr. Gunness, this is your first day here at the trial, is it? A. Yes, it is.

Q. There has been testimony here, Mr. Gunness, about an arrangement made between the Parkers and Mr. Stegmann early in the month of May, 1951, whereby Mr. Stegmann was to be permitted to write checks, and Mr. Parker would notify your bank, and you would honor those checks and charge them to Mr. Parker's account.

Now, are you familiar with what that arrangement was?

A. Well, as I know, the Parkers talked to the President of the bank about it.

Q. I beg your pardon?

(Testimony of Thomas Gunness.)

A. The President—the Parkers talked to the President of the bank about it.

Q. You do not know what that arrangement was?

A. I don't just know the arrangement, no.

Q. Well, did you know that there was some such arrangement as that? A. Yes.

Q. I will ask the bailiff to hand you an exhibit which consists of three checks and a note, photo-static copy of a note, [1072] signed by you, Mr. Gunness, dated May 21, 1951, which is Exhibits 39-A, B, C and D. Will you look at this and state, if you can whether that is a note that you wrote to Mr. Parker enclosing the three checks?

A. That is the note. Now, those must be the checks, too, but I can't say for certain.

Q. Well, do you recall the occasion of mailing those checks to Mr. Parker along with that note?

A. Yes.

Q. Did you handle the clearing of any of those three checks?

A. Did I handle the clearing of any of them?

Q. Yes.

A. Well, when they came into the bank, they were charged to the account. Now, I don't recall just how they were handled. We no doubt charged the account with a memorandum check. Now, I can't say for certain.

Q. Let me ask you this. Did you ever personally handle any of these checks that were written by Mr. Stegmann and charged to Mr. Parker's account?

(Testimony of Thomas Gunness.)

A. Well, I must have if I mailed them to Mr. Parker.

Q. Can you tell me how the system worked? What was the machinery for cashing those checks?

A. Well, these would come into the bank in the regular, in a cash letter. They are all from Newberg, and we would—when these came in we would take these out and put in a memorandum [1073] check charging Mr. Parker's account.

Now, I imagine that is the way we did it. I can't just recall, though.

Q. Did you have any instructions from Mr. or Mrs. Parker on these particular checks that you should pay them?

A. Well, now, I didn't myself. Probably the president did. He must have told me to handle these—I can't—

Q. You have no recollection, then, of any conversation with the Parkers about that arrangement at all? A. No, I can't myself, no.

Q. I will ask the bailiff to hand you another exhibit, 38-A and 38-B, which are two more checks written by Mr. Stegmann in the month of August of 1951, and I understand also charged to Mr. Parker's account. Did you handle either of those transactions?

A. Not that I recall, no.

Q. You don't recall any conversation with the Parkers regarding those? A. No, I can't.

Q. Did you have anything to do with a transaction occurring on August 12th—no, August—did you

(Testimony of Thomas Gunness.)

have anything to do with a transaction on or about September 9, 1951, at which time the Parkers obtained from your bank a cashier's check for \$95,000?

A. Did I have anything to do with it? [1074]

Q. Yes. A. No, I did not.

Q. You have no knowledge about that transaction? A. No.

Q. I will ask the bailiff to hand you Exhibit 319, which is a copy of the letter from the bank at Hood River to your bank, dated, I believe—what is the date of that letter? A. August 10 is the date.

Q. Did that letter, by any chance, come to your attention, Mr. Gunness?

A. No, I have never seen this letter before.

Q. Did you ever talk with anybody about Mr. Stegmann's financial responsibility?

A. No, it would not be in my department. I am a teller at the bank.

Mr. Strayer: I believe that is all, Mr. Gunness.

Mr. Jaureguy: No questions.

Mr. Krause: None.

Mr. Ryan: No questions.

The Court: That is all. You are excused.

(Witness excused.)

Mr. Strayer: I would like to ask Mr. Gunness to remain in the court room until Mr. Wortman has been on the stand, your Honor. I am not sure just who knows about what here. [1075]

JOHN WORTMAN

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Wortman, what position do you hold with the bank at McMinnville, First National Bank at McMinnville? A. Assistant Cashier.

Q. Were you acting in that capacity in 1951?

A. Yes.

Q. And are you the gentleman that Mr. Gunness referred to as having had this arrangement with the Parkers? A. No.

Q. Well, who was?

The Court: He said it was the president of the bank.

Mr. Jaureguy: This is his nephew.

Mr. Strayer: Well, do we have the wrong Wortman?

The Witness: Well, I don't know. You had subpoenaed Mr. Frank Wortman. However, he was not subpoenaed the second time when we were notified.

Mr. Strayer: He was not subpoenaed what?

The Witness: He was not subpoenaed the second time when Tom and I were notified, the second time, the second subpoena.

Mr. Strayer: Yes, I understand Mr. Frank Wortman was not subpoenaed when it was understood that you were the man who had [1076] all the

(Testimony of John Wortman.)

knowledge regarding this transaction; isn't that right?

The Witness: Well, what particular transaction?

Mr. Strayer: I am asking you about this arrangement between the Parkers and the bank whereby Mr. Stegmann could write checks and the Parkers would notify the bank to honor the checks.

The Witness: It must have been a misunderstanding somewhere because that wasn't—it wasn't me.

Q. (By Mr. Strayer): You had no such arrangement with the Parkers?

A. Not directly with them, no.

Q. Who did you have the arrangement with?

A. Had there been any arrangements whereby we had had an arrangement with them, it would have been Mr. Frank Wortman.

Q. Did you know anything about the arrangement?

A. I knew that we had paid some checks drawn by Mr. Stegmann against the Parker account and that we had had an authorization from Parkers at the time. Now, whether that was verbal between Mr. Frank Wortman and the Parkers or whether it was in writing, I could not say.

Q. (By Mr. Strayer): Will you hand the witness 38-A and B, 39-A, B, C and D, Mr. Bailiff?

Will you examine those, Mr. Wortman, and tell me whether you handled any of those transactions for the bank?

A. The only way they would have been handled,

(Testimony of John Wortman.)

these two, would [1077] have been to come through the bank in the regular course of business and charged to Stegmann's account.

Q. Did Stegmann have an account?

A. No, I mean charged to Parker's account, and then the bank return them in the regular bank statement.

Q. Well, you are referring now to the two checks made payable to Ethel Winans? A. Yes.

Q. Did you have any contact with them, anything to do with charging those to the Parker account?

A. No, that would have been just—that would have gone through the regular banking business. Whoever had an authorization would have notified the bookkeeper for this particular book to post the checks to that account.

Q. Well, would there have been any authorization from Mr. or Mrs. Parker as to those particular checks, or are you speaking of a general authorization?

A. Well, there would be probably—there probably was a specific authorization on each check. Whether it was in writing or whether it was verbal, I don't know.

Q. How about the other checks?

A. Well, without looking at our files, I couldn't say on those.

Q. Do you have any information with you from which you can determine how those transactions were handled? [1078]

(Testimony of John Wortman.)

A. No, but from all appearances of the pictures, they were handled the same way as the other two. Now, of course, I am not certain of that. I would have to look at our records to be certain of that.

Q. Do you have some records from which you can determine that?

A. No, I would have to, I would have to look at the photostats of these particular checks.

Q. Well, that is what you have there, isn't it?

A. Well, now, this is the particular check. These were all in May.

The Court: Mr. Strayer, what is it you want to find out? Maybe you can stipulate.

Mr. Strayer: Maybe we can wait until I read this letter Mr. Jaureguy just gave me.

(Thereupon, there was a discussion off the record.)

Mr. Strayer: May we have this marked as an exhibit, your Honor? Do we have an open number?

(Document, letter from the First National Bank of McMinnville, dated January 10, 1953, to Cake, Jaureguy & Hardy, from Frank Wortman, marked Plaintiff's Exhibit 78 for identification.)

The Court: Are you offering that in evidence?

Mr. Strayer: Yes.

Mr. Jaureguy: It is a letter from the president of the [1079] First National Bank to me saying, among other things, that if someone can furnish

(Testimony of John Wortman.)

them with some information about these checks, they will be glad to check them up for them. That is a very brief resume of it. It has other things in it that have not been discussed today.

The Court: Is there any objection to that?

Mr. Strayer: I can go ahead while they are looking at it, your Honor.

Mr. Jaureguy: I would like to have the record show, if I may, Mr. Strayer, that that letter was written in answer to a letter that I wrote to the bank, and I wrote a letter to the bank at the request of Mr. Buell, merely aiding them in getting exhibits and things, is that right, Jim?

Mr. Buell: Yes.

Mr. Strayer: I would like to offer at this time, your Honor, Exhibit 55, which I understand was a series of safe deposit box cards, and Exhibit 79, which I understand to be a compilation of bank statements for the year 1951 of the Chet and Lois Parker account and the Phillips Construction Company account.

The Court: Any objection?

Mr. Jaureguy: No objection.

The Court: Any objection to the safety deposit slips recorded?

Mr. Jaureguy: None. [1080]

The Court: The last two may be admitted.

(Document, letter from The First National Bank of McMinnville, dated February 4, 1953, to Nicholas Jaureguy, from J. Wortman, previ-

(Testimony of John Wortman.)

ously marked Defendant's Exhibit 55 for identification, was received in evidence.)

(Document previously marked Plaintiff's Exhibit 78 for identification was received in evidence.)

(Letter of January 30, 1953, from The First National Bank of McMinnville to Phillips, Coughlin, Buell & Phillips, containing photostatic copies of bank statements, was marked Plaintiff's Exhibit 79 for identification.)

The Court: Any objection to 79?

Mr. Jaureguy: No.

Mr. Krause: No.

Mr. Ryan: No.

The Court: Admitted.

(Document previously marked Plaintiff's Exhibit 79 for identification was received in evidence.)

Q. (By Mr. Strayer): Mr. Wortman, the testimony here indicates that on Sunday, September 9, 1951, Mr. or Mrs. Parker obtained [1081] from your bank a cashier's check of \$95,000. Did you handle that transaction?

A. There was a draft drawn on The First National Bank of Portland.

Q. What was?

A. Instead of—rather than a cashier's check, it was a draft.

Q. It was a draft rather than a cashier's check.

(Testimony of John Wortman.)

Did you handle that transaction? A. Yes.

Q. Will you just tell us what occurred?

A. Mrs. Parker called at my home and said that she would like to buy a \$95,000 cashier's check or draft, so I went to the bank and wrote one out for her.

Q. What did she give you in payment for it?

A. A check.

Q. Just a personal check? A. Yes.

Q. Can you explain why it was that the two checks to Ethel Winans and the \$95,000 check which she gave you on that day were charged to the Phillips Construction Company account?

A. Two checks? What did you say about two checks?

Mr. Strayer: Will you hand the witness this exhibit again?

Q. I believe, Mr. Wortman, that the two checks which you have in your hand, 38-A and 38-B, are represented by the \$1,000 and the \$4,000 items on the bank statement for the month of August, [1082] 1951, of the Phillips Construction Company, and that the \$95,000 item in September of 1951 is the cashier's check which was charged Phillips Construction Company. That is, a draft. Now, how does it happen that those three checks, the two checks and the draft, were charged Phillips Construction Company account? Do you have any recollection of that?

A. How does it come they were charged to that account?

Q. Yes, as I understand it, you had two accounts

(Testimony of John Wortman.)

there, one Phillips Construction Company, and one Chet or Lois Parker.

Now, were you told to charge it in the manner that it was charged in any of these three items?

A. I can't recall offhand whether we were or not; however, the Phillips Construction Company—of course, Chet and Lois Parker were the Phillips Construction Company. That was their account.

Q. You do not remember Mrs. Parker making any request as to the manner in which any of these checks were to be charged? A. No.

Q. Well, now, how long had it been since the Phillips Construction Company account was active before August 9, 1951?

A. I could tell you exactly by the bank statement. Well, it was opened on August 9, 1951. (Consulting document.)

Q. Was that the first time that you had had such an account there? A. Yes. [1083]

Q. That was opened, wasn't it, by a transfer of \$100,000 from the Chet and Lois Parker account to the Phillips Construction Company account?

A. That is correct.

The Court: When was that account closed?

The Witness: What account?

The Court: The Phillips Construction Company, or is it still active?

The Witness: It is still active.

Q. (By Mr. Strayer): Well, Mr. Wortman, I will ask the bailiff to hand you Exhibit 314, which is a request for information regarding Mr. Steg-

(Testimony of John Wortman.)

mann, coming from your bank at Hood River. Do you know anything about that request, or did you do anything in regard to it?

A. No, I did not have anything to do with it.

Q. You would not know who it would have been from your bank that called the Hood River bank?

A. It was undoubtedly the president, Mr. Frank Wortman.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. I noticed, Mr. Wortman, on the date that the \$95,000 check was given for the bank draft, that there was sufficient—there were sufficient funds in the Phillips Construction Company account to pay it, but not sufficient funds in the Chet or Lois [1084] Parker account. Could that have been the reason that it was charged to the Phillips Construction Company? A. Well, not necessarily, no.

Q. Wasn't this a case where, if the Chet and Lois Parker account did not have sufficient funds, you automatically charged it to the Phillips Construction Company account?

A. Well, anything of that amount—as nothing was said in regard to the check at the time Mrs. Parker gave it to me, it is possible that she neglected herself to put Phillips Construction Company account on it. However, any checks drawn by either

(Testimony of John Wortman.)

Chet or Lois Parker were automatically charged to the Phillips Construction Company.

Q. If their other account did not have sufficient, you mean?

A. What was the length of time there that the two accounts were open?

Q. Well, I don't know when the Chet and Lois Parker account was opened. The Phillips Construction Company account was evidently opened on August 9th. This \$95,000 check was September 10th, but I notice that none of the checks that were charged to the Phillips Construction Company during the months of August and September were signed in the name of Phillips Construction Company as drawer, but were signed simply by Chet Parker or Lois Parker.

Mr. Strayer: Or Stegmann.

Mr. Jaureguy: Or Stegmann, yes. [1085]

The Witness: Well——

Q. (By Mr. Jaureguy): So was it a matter of consequence, did you regard it then as a matter of consequence whether these checks were charged to one of their accounts or the other one?

A. I assume so, yes.

Q. What would the difference be if you charged them, if you charged against the Phillips Construction Company, signed by Chet Parker or by Lois Parker and others, signed exactly the same to their personal account, that is, to the account which was in their own names rather than Phillips Construction

(Testimony of John Wortman.)

Company? What difference did it make to you which one you charged it to?

A. Well, I don't know. It is, as you say, if some checks were larger than the balance in their personal account, or we could have been notified by them to charge the checks to that account.

Q. You could have been, but you are not saying that you were? A. No.

Mr. Jauregui: That is all. Thank you very much.

Mr. Ryan: No questions.

The Court: Any questions?

Mr. Krause: No questions.

Mr. Strayer: Mr. Buell just called to my attention the fact that the safety deposit withdrawal slips do not cover the 1950 withdrawals. I think it was our understanding to have both [1086] 1950 and 1951.

Mr. Jauregui: Well, I can't remember, of course, the understanding. If it is of consequence, I will look up my letter that I wrote him.

Mr. Strayer: I think it is of no consequence if we can get the 1950 withdrawal slips.

The Court: Withdrawal slips?

Mr. Strayer: Withdrawals from the safety deposit box, entries in the safety deposit box, I should say.

The Court: What would the relevancy of that be?

Mr. Strayer: Well, it bears directly, your Honor, upon the relevancy of the testimony of both Mr.

(Testimony of John Wortman.)

and Mrs. Parker relative to cash transactions of Stegmann.

The Court: I thought it was the early part of 1951?

Mr. Strayer: Well, the \$22,000 note was in November, 1950.

The Court: Where was that safety deposit box located?

Mr. Strayer: First National Bank of McMinnville, your Honor.

The Court: Do you have them coming, Mr. Jaureguy?

Mr. Jaureguy: Oh, no, your Honor, I haven't anything. I gave them everything I had.

The Court: Do you want me to ask Mr. Wortman and the other man to furnish——

Mr. Strayer: That is what I had in mind.

The Court: All right. Mr. Wortman, come back here. [1087]

(Witness resumes witness stand.)

The Court: Do you want Mr. Wortman back here? Is there any need for him to come back?

Mr. Strayer: I think all that is necessary is for your Honor to direct him to produce.

The Court: Yes, but do you want him to come back?

Mr. Strayer: Not as far as I am concerned.

The Court: Mr. Wortman, apparently Mr. and Mrs. Chet L. Parker had a safety deposit box.

Mr. Strayer: Two boxes.

(Testimony of John Wortman.)

The Court: Two boxes at the First National Bank of McMinnville.

There has been produced in Court the record of the times that Mr. and Mrs. Parker had access to the box during the year 1951. We understand that you have such a record for 1950; is that true?

The Witness: Should have, yes.

The Court: Are you going back to the bank today?

The Witness: Yes.

The Court: Will you send to Mr. Jaureguy, because he is the attorney for Mr. and Mrs. Parker, a list of the times that that box was opened by either Mr. or Mrs. Parker during the year 1950? During the whole year, or is the last six months sufficient?

Mr. Strayer: I think the last six months is sufficient, [1088] your Honor.

The Court: From July 1, 1950, to December 31, 1950.

Mr. Strayer: I think we might like—we want all entries. I am not sure whether anyone else has access to the box or not.

The Court: If someone else had access to the box and they opened the box, we would like to have that information also.

Just deliver to Mr. Jaureguy. You get a card from Mr. Jaureguy and send it to him. If you do that today, he will receive it tomorrow. Both of you, you and Mr. Gunness, are excused from further attendance at the trial. The only thing you are supposed to do is send Mr. Jaureguy that letter.

(Testimony of John Wortman.)

Mr. Jaureguy: I may say that it took them a long time to get the others. It may be they won't get them here by tomorrow.

The Court: Get them here as soon as they can.

(Witness excused.) [1089]

WALTER BROWN

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Brown, where is your home?

A. What?

Q. Where is your home?

A. Sheridan, Oregon.

Q. Are you acquainted with Walter Stegmann?

A. Yes, I am.

Q. Did you have a contract with him, or some kind of a working arrangement with him, on a logging of a Gopher Valley job back in 1949 and 1950?

A. I did in 1949.

Q. How long did you work for Mr. Stegmann?

A. Oh, I imagine around a month, a little over.

Q. Were you paid for your services?

A. What?

Q. Were you paid for your services?

A. Yes.

Q. That was a logging operation that Mr. Stegmann had out in Gopher Valley, Mr. Brown?

(Testimony of Walter Brown.)

A. That is right.

Q. Did you have some kind of a contract with him to do logging [1090] for him? A. I did.

Q. Didn't you have some kind of a claim against him arising out of that operation, a wage claim?

A. No wage claim. The cat work; no wage claim.

Q. What kind of a claim was it?

A. Caterpillar work.

Q. Oh, for Caterpillar work. For how much was your claim?

A. I don't remember now. It has been too long ago.

Q. Well, approximately?

A. I would not attempt a guess.

Q. Were you paid your money?

A. I was not paid all of it, no.

Q. Did you make any effort to claim that money that was due you? A. I did.

Q. Have you ever been able to collect it?

A. No.

Q. What effort did you make to try and claim it, Mr. Brown?

A. Oh, I sent him a statement, went to talk to a lawyer, and the lawyer told me he didn't have nothing; it was no use trying. All I could get was a judgment.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all. *Res inter alios acta*, so I won't question it. [1091]

Mr. Ryan: We cannot see the relevancy of it either. We have no questions.

(Testimony of Walter Brown.)

The Court: Any cross-examination?

Mr. Krause: No, we have no cross-examination.

(Witness excused.) [1092]

MILLARD ELLIS

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your Honor, may I have Exhibit 76, please?

Mr. Ellis, where is your home? A. Willamina.

Q. In 1949 and 1950, were you connected with the Willamina Garage? A. Yes, sir.

Q. In that connection did you have some business with Walter Stegmann? A. Yes.

Q. What did that business consist of?

A. Oh, general garage work, gas and oil, what-not, parts and labor.

Q. Was there an occasion there, Mr. Ellis, where you were attempting to collect a bill of some three or four thousand dollars from Mr. Stegmann?

A. Yes.

Q. What was the amount; do you remember?

A. \$3,829.02.

Q. About what time was that?

A. That was all made mostly in 1949. [1093]

Mr. Ryan: What was that, please?

The Witness: Made in 1949, the biggest part of it, all of it, I am not sure.

(Testimony of Millard Ellis.)

Q. (By Mr. Strayer): What steps did you take to try to force collection of your bill?

A. Well, I did hold a truck for a while.

Q. You had a truck that you had been doing some work on, did you?

A. Well, I done work on all of his trucks.

Q. What was the truck that you held? Was that a truck that you had been working on?

A. Well, not a lot of work, but I had done some work on it, gas and oil and repairs.

Q. Was there a trailer that you also held?

A. There was a trailer on the truck.

Q. This was along in 1950 sometime, was it?

Mr. Ryan: 1949.

The Witness: I think I took that truck in about November of 1949.

Q. (By Mr. Strayer): How long did you hold it?

A. I am not sure of that. I think until about September, 1951.

Q. Did you have any contact with either Mr. or Mrs. Parker regarding the truck?

A. Mrs. Parker.

Q. Did she come to see you? [1094]

A. Yes.

Q. Can you give us the approximate time when that happened?

A. Well, I am not sure. I think it would have been probably in March or April, right starting the logging in the spring.

Q. March or April, 1950. That would be in 1950?

A. Yes, 1950.

(Testimony of Millard Ellis.)

Q. What was your conversation with her?

A. Well, she come wanting to know how much I had against the truck and I told her, well, it would not go out without the whole bill, four thousand. Of course, I had an interest in it that would run over four thousand, is what I was talking about, run over four thousand.

Q. Was that all the conversation with her?

A. Well, mostly, yes.

Q. Had you made investigation to determine who the owner of the truck was? A. Yes.

Q. Who did you understand the owner to be?

A. I took it up with Salem on the title, and the title was in Walt Stegmann.

Q. All right. Now, what next happened on that transaction?

A. Well, the next thing I knew, why, I got a subpoena or something in court to show cause why I would not turn the truck over to Parker.

Q. I will hand you an Exhibit, 76, Mr. Ellis. Does that appear [1095] to be a copy of a complaint that was served upon you? A. Yes, that is it.

Q. Referring to the complaint, I notice that the complaint is one filed by Chet Parker against you in which he seeks recovery of a White truck and a Walker trailer, and this complaint alleges: "That on or about the 24th day of July, 1950, and before the commencement of this action, the plaintiff duly demanded said personal property from the defend-

(Testimony of Millard Ellis.)

ant, but the defendant refused and still refuses possession thereof to the plaintiff.”

Now, could it have been about the 24th of July that you talked to Mrs. Parker?

A. Well, it could have been, but I figured, I thought it was maybe probably earlier in the spring than that. I really forget. I figured it would be close to the spring logging opening up because I remember talking about she had a lot of logs to cut.

Mr. Strayer: I am not sure whether 76 is in, your Honor. If not, I offer it at this time.

Mr. Jaureguy: We object to it as incompetent, irrelevant and immaterial. We do not want to have to try that lawsuit all over again unless we have to.

Mr. Ryan: I object to it on the same grounds, your Honor.

Mr. Lindsay: It has been admitted.

The Court: It has been admitted already. I do not have [1096] to pass on it.

(Document, letter from Earl T. Newbry, Secretary of State, January 21, 1953, to Griffith. Phillips & Coughlin, marked Plaintiff's Exhibit 80 for identification.)

Mr. Strayer: I also wish to offer in evidence at this time a certificate from the Secretary of State dated January 21, 1953, which traces through the title and the transfers on this particular truck.

The Court: Any objection?

Mr. Ryan: May we see it?

Mr. Strayer: Now, I notice that according to

(Testimony of Millard Ellis.)

the certificate of the Secretary of State, the title was transferred to Chet L. Parker. It was applied for on July 22nd. "On July 22, 1950, the above title was received in this office endorsed for transfer to Chet L. Parker, Box 46, Route 1, McMinnville, Oregon, showing him to be both registered and legal owner.

"On July 25, 1950, the title was transferred and reissued in the name of Chet L. Parker."

Q. Now, I want to ask you, Mr. Ellis, whether you, after this replevin suit was filed seeking recovery of this truck and trailer, did you then check to find out whether Mr. Parker had become owner of the truck and trailer?

A. I did not know nothing about it until they served papers on me. [1097]

Q. Did you do anything about the lawsuit?

A. Well, I just got a lawyer, but he says I would have to turn it over to them, couldn't find nothing.

Q. So you turned over the truck and trailer to Mr. Parker. Have you ever been able to collect your bill from Mr. Stegmann? A. No, sir.

Q. Have you made efforts to do so?

A. Well, yes, they all tell me that was——

The Court: I didn't hear that.

The Witness: I say they all don't want to take the case. I talked to a lawyer and the Credit Bureau, but they said there was no use trying.

Mr. Strayer: That is all, your Honor.

(Testimony of Millard Ellis.)

Cross-Examination

By Mr. Jaureguy:

Q. I don't know as I have got the facts straightened up to ask you any questions or not. I think both Stegmann and Parker did a lot of business with the Willamina Lumber Company, didn't they?

A. Willamina Lumber Company.

Q. Were you connected with the Willamina Lumber Company? A. Willamina Garage.

Q. Oh, the Willamina Garage. You don't know anything about the Willamina Lumber Company, then? A. No. [1098]

Q. Stegmann had a lot of work done by you besides this? A. Yes.

Q. This work, you say, was done in 1949?

A. Most of that bill was made in 1949.

Q. Which bill is that, the one you are talking about? A. \$3,829.

Q. We do not have copies of the bill here, do we, as far as you know?

A. No, not as far as I know.

Q. You never did own this truck, did you?

A. No, sir.

Q. What was your—were you claiming the right to hang on to it? A. Well, no, not exactly.

Q. Why did you hang on to it then?

A. Well, it was brought in my garage for grease. I just kept it because he owed me a bill.

(Testimony of Millard Ellis.)

Q. Then later on—where is that lawsuit—is this it?

Mr. Strayer: No.

(Discussion off the record.)

Q. (By Mr. Jaureguy): Then in July, 1950, this case was filed against you by Chet Parker, and Francis Marsh was his attorney; that is correct, isn't it? A. I don't know the date.

Q. Well, it is subscribed and sworn to by Chet Parker the 20th [1099] day of July, 1950. It was filed August 23, 1950.

A. I don't think it was served on me until September. I am not sure of that. I was in the hospital.

Q. Did you know about it when it was signed?

A. Well, there is—no, I did not.

Q. You did not know about it until it was served on you? A. That is right.

Q. Then you made no appearance in the case?

A. Sir?

Q. Your lawyer told you that you didn't have a right to keep the truck? A. That is right.

Q. That is why you did not try to defend it?

A. That is right.

Q. How long have you known Chet Parker?

A. Chet Parker? Oh, I suppose for probably since 1944, 1945.

Q. Has he had work done in your garage before?

A. I don't believe so. I am not sure although it

(Testimony of Millard Ellis.)

could have been some little thing, but not as I know of.

Mr. Jaureguy: That is all.

Mr. Ryan: May I have an opportunity to look at this, your Honor?

The Court: All right. Mr. Krause?

Mr. Krause: I have not anything. [1100]

Cross-Examination

By Mr. Ryan:

Q. After you took this truck and trailer that you described here, you kept it down at the garage, I assume? A. Yes.

Q. After you did that, isn't it true that Mr. Stegmann asked you if he could sell the truck and trailer and realize on it and satisfy the indebtedness he had to you? A. No.

Q. Was there any dispute about the amount?

A. No.

Q. Isn't it true that there was some dispute about some of the people that had been signing for gas down at your place in the name of Walter Stegmann? A. No.

Q. Did you ever consult the First National Bank at McMinnville about this truck? A. No.

Q. Do you know whether Otto Heider had any interest in this truck?

A. Not until papers were served on me.

Q. Then you did know it?

A. That is the only time.

(Testimony of Millard Ellis.)

The Court: Any further questions?

Mr. Ryan: I just want to take a look. [1101]

The Court: Go ahead.

Mr. Ryan: You have never attempted any legal action for the recovery of this money?

A. Oh, only just to turn it over to the credit bureau or ask a lawyer about it. They told me it was too late.

Q. But at the time you took that truck you did not have an interest in the First National Bank of McMinnville or Otto Heider, in the truck?

A. They did not have it then.

Q. They did not have it then?

A. I checked at Salem and checked the title and the title was First National Bank of Portland and Walter Stegmann.

Q. First National Bank of Portland, I am sorry. In other words, it was The First National Bank of Portland?

A. They had a lien on it at the time Walt Stegmann's name was on the title.

Mr. Ryan: I am through, your Honor.

The Court: That is all.

Mr. Jaureguy: I want to ask one more question. You knew that Chet Parker bought this truck from Otto Heider, didn't you?

The Witness: Not until after they served papers on me.

Mr. Jaureguy: Then you did learn?

The Witness: Sure.

The Court: I thought that the First National

(Testimony of Millard Ellis.)

Bank of Portland had the lien. How did Otto Heider get into it? [1102]

Mr. Strayer: Heider does not appear in the Secretary of State's certification. If he had any interest, it must have been unrecorded.

Mr. Jaureguy: Well, it might have been a transfer of the bank's lien.

Mr. Krause: According to this statement here from the Secretary of State, Otto Heider never had any interest in this truck.

The Court: We will argue about those things later.

Number 80, the letter from the Secretary of State, may be admitted.

(Document previously marked Plaintiff's Exhibit 80 for identification was received in evidence.)

(Witness excused.) [1103]

RALPH COOKE

recalled, testified as follows:

Examination

By Mr. Buell:

Q. Mr. Cooke, I wonder if you could advise the Court as to whether or not the Forest Service would be interested in acquiring the 25-acre tract or the 16-acre tract which Mr. Parker bought on Lost Lake, which was formerly owned by the Winans?

A. Well, we are—the National Forest is always

(Testimony of Ralph Cooke.)

interested in consolidating their holdings of land that is primarily used for timber growing or of known recreation value, that is, land inside the boundaries of a National Forest.

The Court: What would you give him for it?

Ask him what he would pay for it or what they would pay for it.

Q. (By Mr. Buell): Are you in a position where you can give any statement at the present time as to about how much the Government would pay for it?

A. I could not, because we appraise the land and the values that exist on it. I don't know what reservations have been made on the tract of land, how much acreage there is left, or how much timber there is on it, so I couldn't hazard a guess as to the values.

Q. On the question of timber, could you say as to whether or not the Forest Service could make an exchange based upon an equal amount of footage on other property as is on the property that is to be exchanged, or as nearly equal an [1104] amount?

A. It would be unusual if the footage was equal. We exchange on values only.

Q. You exchange on values, and the values would be determined at the time of the proposed exchange; is that right? A. Yes.

Mr. Buell: That is all.

Mr. Jaureguy: No questions.

(Testimony of Ralph Cooke.)

Mr. Ryan: No questions.

Mr. Krause: No questions.

The Court: That is all.

(Witness excused.) [1105]

G. W. PARMAN

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. What is your name, sir?

A. G. W. Parman.

Q. Where do you live?

A. Scappoose, Oregon.

Q. What is your occupation?

A. Logging operator, contractor.

Q. Logging contractor. Do you know Mr. Chet Parker and Mr. Walter Stegmann?

A. I know Mr. Stegmann. I don't know Mr. Parker.

Q. When did you first meet Mr. Stegmann?

A. I can't tell you the exact date, but I believe it was in February, 1952.

Q. What was that in connection with?

A. I was, at that time I was associated with P & D Logging Company, and I was looking for timber.

Q. What logging company?

A. P & D Logging Company.

(Testimony of G. W. Parman.)

Q. What is that?

A. That was at that time composed of myself and a man by the name of Oren Davis. [1106]

Q. You were looking for timber, you say?

A. That is right.

Q. How did you happen to run into Mr. Stegmann?

A. I got hold of him. I heard about some timber that was up Slick Rock Creek near Rose Lodge, Oregon. I got hold of him through some friend of mine. I think by one of our truck drivers that knew that Stegmann had some association with some timber up Slick Rock Creek.

Mr. Jaureguy: What is that creek, Slick——

A. Slick Rock Creek.

Q. (By Mr. Buell): Did Stegmann have timber available?

A. He took me up after making an appointment to meet him. He took me up and showed me this area, the timber that he had to sell up on the Slick Rock Creek area.

Q. Who was the owner of that timber; do you know?

A. No, I do not. I didn't spend very much time on the timber because it didn't interest me too much, so I don't know who the owner was. I didn't look into the title of it.

Q. Well, did Stegmann show you any other timber?

A. Yes, he did. I asked him about some other plots of timber that he might have and he told me

(Testimony of G. W. Parman.)

that he had a batch of timber over at Gale's Creek and also up above Willamina for sale.

Q. Did he tell you he had timber of his own to sell, or timber of somebody else's?

A. He didn't tell me who was the owner of the timber at that [1107] time.

Q. Did you ever go to look at that timber with him?

A. Yes, I looked at both patches with him.

Q. That is the timber on Gale's Creek and by Willamina?

A. That is right.

Q. Had he made any offering price on it to you?

A. Yes, he made a price on both patches. They were round figure prices. I don't know as they were, well, I presume they would be called positive quotations, yes.

Q. How much timber was involved?

A. It has been quite a while ago. I couldn't find my notes on it, but, as I recall, the stipulated amount, or I should say the amount indicated by Stegmann on the Willamina timber was something like, I just don't know. This is a guess I am making. It was three or four million, and the area up by Gale's Creek, I believe, was supposed to be around four million feet.

Q. Then, did you ever make any offers on the timber, or what developed?

A. The area by Willamina, I wasn't particularly interested in it. The price was clear out of line, in my opinion, but the area at Gale's Creek was very interesting. He did give us a price quotation on it,

(Testimony of G. W. Parman.)

and I spent considerable time going through the timber trying to find out if the indicated scale was there. I checked into the title of it somewhat, and then I, following that I made an effort to contact Stegmann and get [1108] together with him on a deal with him.

Q. What did you find out about the title to the property that he had shown you?

A. I tried to find my notes on that this morning, and I couldn't locate them. I have them in the file some place, but I couldn't locate them, but my memory is that the majority of the land involved and pointed out to me, I think there was 11 forties, as I recall, was—the taxes on it were paid and I think it was in the, that the title was held by L. H. & L. Lumber Company, and the one forty, I believe, was held by Chet Parker, one forty or two, perhaps. I am not sure.

Q. Then did you ever have any dealings with, at all, with Mr. Parker in connection with that property?

A. Not directly. I made an effort to contact Mr. Parker on several occasions, and I did finally get hold of him on the telephone, by telephoning.

Q. By telephoning him where; do you remember?

A. I telephoned him at his brother's place in McMinnville.

Q. What did he have to say about this particular property?

(Testimony of G. W. Parman.)

Mr. Jaureguy: You mean the brother or Chet?

The Witness: It was Chet L. Parker who I asked for, and I assume it was Chet Parker I was talking to. It was represented as so.

Mr. Jaureguy: This is all in under our objection.

The Court: Well, this is—— [1109]

Mr. Jaureguy: This is different.

The Court: This is a different objection. He cannot show that he talked to Chet L. Parker.

Mr. Jaureguy: Go ahead. We will withdraw it.

The Court: If he did talk to Chet L. Parker, your other objection would be no good.

Mr. Jaureguy: That is correct.

The Court: You are not raising any objection?

Mr. Jaureguy: I am withdrawing the objection I started to raise; that is right. I will let it go.

Q. (By Mr. Buell): You say you called Oscar Parker's—or Chet Parker's brother at McMinnville and asked for Chet?

A. I called him several times looking for Chet Parker, yes, and finally one Sunday, I believe it was in March, I don't know the exact date, as I was coming back from Portland I stopped in and made the telephone call and did get hold of the house they told me was Chet Parker. I asked for Chet Parker, and this man came on the line, and I talked with him concerning the timber. I told him the proposition that we was offered, that we was willing to go with, and we talked over what would be desirable in the timber, and at that time, why, we made an

(Testimony of G. W. Parman.)

appointment to meet his representative, or he didn't say his representative. I should say to meet Mr. Stegmann at Bob Talbot's office and take an option on the timber.

Q. You say you made an appointment with Mr. Parker to meet [1110] with Mr. Stegmann at the Bob Talbot office to take an option on that particular timber? A. That is right.

Q. On just a forty, or on the entire 11 forties?

A. On the entire 11 forties.

Q. Then did you subsequently meet with Stegmann?

A. No, we went in the prescribed time, my partner and I and Stegmann didn't show up.

Q. Had Stegmann ever mentioned to you any interest of Chet Parker in the timber?

A. He had.

Q. What was said about Parker's interest in the timber?

A. It was not said positively, but he indicated to me on several occasions that Chet Parker was interested in the timber.

Q. But didn't tell you what the exact interest was, I take it?

A. No, he did not. That is why I went and checked the title.

Q. Did Mr. Stegmann ever make any concrete offers or propositions to you for the purchase of that timber? A. Yes, he did.

Q. Then, finally, did you ever get together with either Mr. Stegmann or Mr. Parker on the final

(Testimony of G. W. Parman.)

figure for the property, or did it go by the boards?

A. No, we never got together. Stegmann didn't show up to [1111] complete the option, and I was unable to get hold of him by telephone for perhaps a week or ten days. I am not sure just how long it was. When we finally did manage to get hold of Stegmann he said they were not interested in any option.

Q. During the course of your discussion with Stegmann, did he ever say anything about having to check with somebody else before he could make any change in the offering price or terms for sale?

A. He did, yes.

Q. Did he mention the person by name that he would have to check with?

A. I can't recall whether he actually mentioned anybody by name although Parker's name came into our conversation a few times.

Mr. Buell: I have nothing further.

Cross-Examination

By Mr. Jaureguy:

Q. Could you give us a little better idea of where this timber is, the township, for instance?

A. I cannot tell you exactly because it has been a year, nearly, since I have looked at that, and I just don't know. It is located out right close to the Forest Grove Water Shed and directly west of Gale's Creek, Oregon, approximately three miles.

Q. West of Gale's Creek? A. Yes. [1112]

(Testimony of G. W. Parman.)

Q. This was all in 1952 you are talking about?

A. Yes, that is correct.

Q. How much of the timber did you say you learned through tax receipts or something, tax statements or tax rolls, had belonged to Chet Parker?

A. I don't want to say positively. I know that one forty, and I believe maybe two forties, belonged to Parker.

Q. Where were those forties?

A. They were listed, I should say they were—well, I would almost have to show you a map to indicate where they were. These 11 forties were strung out over quite a little area. They were mostly all joined by corners, but the part that was owned, as indicated by tax payments or ownership title or some such matter that I took on the courthouse, was where most of your desirable timber was situated.

Q. You mean west of Gale's Creek, or down by Willamina? A. West of Gale's Creek.

Q. That is where the forties were that——

A. Two forties still belonged to Parker, yes.

Q. I don't know as maybe you did, but can you give us some definite idea as possible as to the time that you talked over the telephone to the man that you thought was Chet Parker?

A. I can't give you a date. I am sorry, I cannot.

Q. Would it be February, 1952?

A. I think it is probably March. Quite a little time elapsed. [1113]

(Testimony of G. W. Parman.)

Q. Probably in March?

A. Quite a little bit of time had elapsed between the time I first started talking with Stegmann concerning timber when I finally got hold——

Q. You never did see Parker?

A. Never have seen Parker.

Q. The only time you think you talked to him, or talked to him, was that time over the telephone?

A. That is right.

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Ryan:

Q. You say there were 11 forties involved in the property that was shown?

A. As I remember, eleven.

Q. As a matter of fact, didn't Mr. Stegmann tell you that that property was owned by Mr. Lessard?

A. Seward, you say?

Q. Lessard, something like that?

A. No, I don't recall the name.

Q. Do you remember who owned the other pieces?

A. L. H. and L. Lumber Company is who owned it, according to my check at Hillsboro.

Q. Have you ever talked to those people?

A. No, I haven't. [1114]

Q. Do you know whether Mr. Lassard is involved in that company?

A. No, I do not.

Q. In this appointment you had, Mr. Stegmann didn't show up for you, but you did talk to Mr.

(Testimony of G. W. Parman.)

Stegmann prior to that? A. Yes.

Q. You did?

A. Perhaps—I don't know for sure whether I did or not. I think that Mr. Parker told me he would contact Stegmann and arrange to meet at Bob Talbot's, although I may have talked to Stegmann prior to the meeting. I am not sure about that.

Q. You are not sure?

A. It was quite a while ago. I don't know.

Q. You do recall this telephone conversation of the meeting arrangements?

A. Yes, that is right.

Q. You say you looked up the tax title on that land when—or that you knew by name Chet L. Parker prior to looking at the tax title?

A. I beg your pardon?

Q. Did you know of the name Chet L. Parker with reference to this property prior to looking at these tax titles?

A. I had some understanding on it. I had it in my mind, although I don't know of any positive reference.

Q. Had there been any conversation about Mr. Parker being interested in picking up these 11 forties? [1115]

A. Mr. Parker's name had came up in our conversation.

Q. That is with Mr. Stegmann?

A. With Mr. Stegmann, yes.

Q. Is it possible that that might have been part of the conversation? A. Possibly.

(Testimony of G. W. Parman.)

Q. Then you did look up the names in the tax title, and you found out that there were 11 forties in the L. H. and L. Lumber Company and Mr. Parker was owner of two, is that correct.

A. As I recall it. It has been nearly a year ago, and I don't remember the exact circumstances for sure.

Q. Nothing came of this deal?

A. That is right.

Q. You never did purchase the property?

A. That is right.

Mr. Ryan: That is all.

The Court: Mr. Krause?

Mr. Krause: Nothing.

Redirect Examination

By Mr. Buell:

Q. Mr. Parman, do you know a realtor by the name of Lee Kennedy at Newberg? A. I do.

Q. Do you ever remember along about the spring of 1952 of telling Mr. Kennedy that he could contact Chet Parker through the [1116] Oscar Parker residence at McMinnville?

A. I don't know. I might have been able to because that is where I got hold of him. I don't know whether Kennedy ever——

The Court: What difference does that make?

Mr. Buell: I thought it might have some bearing on that telephone call, your Honor.

The Court: He does not have to corroborate

(Testimony of G. W. Parman.)

himself. The vice of this testimony is that he has never seen Mr. Parker, never talked to him before, and would not know whether the man who purported to be Mr. Chet L. Parker was, in fact, Chet L. Parker. That is the difficulty of this testimony. That is all.

(Witness excused.)

The Court: We will take a recess.

(Recess taken.) [1117]

JAMES KALDENBERG

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Kaldenberg, where is your home?

A. Up on the Washougal River in Washington.

Q. You are in the timber business, are you?

A. Logger, and buy little patches of timber.

Q. Now, did you have a talk with Mr. and Mrs. Parker early in 1952? A. Yes.

Q. Where did that talk take place?

A. At my home on the river.

Q. What was the talk that you had with them at that time?

A. Well, I needed some financing for to buy some timber, and I found out through another per-

(Testimony of James Kaldenberg.)

son that Mr. Parker might help me out with the finance of the patch of timber.

Q. He said that he would help you out?

A. Yes, he probably could help me out, this other guy said.

Q. Now, a short time after that, 30 days or so, did you meet Mr. Stegmann?

A. Yes, about a month.

Q. That is Walter Stegmann?

A. Yes. [1118]

Q. Did you have a talk with him?

A. Yes, he come to the house, and we had a couple little deals together.

Q. What was your conversation with Mr. Walter Stegmann, now, when he came?

A. Well, he come——

Mr. Jaureguy: My same objection will go to this testimony, Your Honor.

The Court: All right.

The Witness: He came up to the house and he said that he had heard that I had a few small patches of timber around. He was coming up to help me to get them straightened around and that if we needed any big financing for big patches, why, we could sure get it.

Q. (By Mr. Strayer): Did you and Mr. Stegmann then get into some timber deals?

A. Yes, we had one of them.

Q. What did that deal involve?

A. Well, it was just a small deal. I think it was

(Testimony of James Kaldenberg.)

a couple hundred thousand, three or four hundred thousand.

Q. You bought that timber for how much?

A. Fifteen hundred dollars.

Q. Who put up the money to pay for it?

A. Walter Stegmann.

Q. How was the money paid? [1119]

A. Well, he had the cash, but he would rather have a cashier's check, so we went to Washougal, to the Washougal bank, to get a check—cashier's check.

Q. You say he had cash or what?

A. He would sooner have a cashier's check than the cash, so we went down to the Washougal bank in Washougal, Washington, got a cashier's check.

Q. That is, the seller wanted a cashier's check?

A. Yes.

Q. When you bought that cashier's check for \$1,500 and paid for the property, then did you sell the property? A. Yes.

Q. You sold it for how much?

A. For \$2,500.

Q. You made a profit, then, of \$1,000. What was done with that thousand dollar profit?

A. Mr. Stegmann gave me half, and he took half.

Q. Did you have any conversation with Mr. Stegmann regarding his method of financing that sort of transaction? A. No.

Q. Was the name of Mr. Parker mentioned in any of your dealings with Mr. Stegmann?

(Testimony of James Kaldenberg.)

A. Only if we would have a big purchase of timber.

Q. What did he say about that?

A. Well, he said he was sure Chet Parker would help us out if [1120] we needed financing if we found a big patch of timber.

Q. Did he say anything about any past transactions with Mr. Parker?

A. No, he said he had some kind of a deal with him, but I didn't pay any attention, regard to what it was.

Q. Was there another transaction on the Northwest Door timber?

A. No, me and Mr. Stegmann went up to Tacoma, Washington, and put in a bid on two sections of timber up in the Stebbin's Creek for \$70,000.

Q. Then what happened?

A. Well, later on the timber was sold.

Q. To whom?

A. Chet Parker, I guess. I don't know for sure.

Q. Did you have—he bought the timber for \$90,000; is that right?

A. That is what I heard.

Q. Now, did you have a conversation with Mr. Stegmann about that?

A. Well, I thought the deal was kind of funny. I figured maybe they was trying to get around me, but I have no proof of it.

Q. What did he say about it?

A. He didn't say much of it. He denied it and that is all, denied having anything to do with it or anything.

(Testimony of James Kaldenberg.)

Q. What did he say, if anything, about future financing? [1121]

A. Well, I thought maybe it was better we would not go for any financing with Parker, so he thought maybe he could get financing from a person by the name of Hutchinson, something like that.

Q. He mentioned someone by the name of Hutchinson, did you say?

A. Hutchinson, something like that.

Q. Did he say where this man lived?

A. Down towards the Coast some place.

Q. All right. Now, did you have any talk with Mr. Stegmann regarding some timber up around Hood River?

A. He told me that they had a patch up around Hood River of some awfully nice timber.

Q. Did he say how much it was, how much land involved?

A. He said between 40 and 60 acres, I think, and he said there was between four and six million feet.

Q. What did he say they wanted for it?

A. What?

Q. What did he say they wanted for it?

A. I forget what the price was on it.

Q. Did you and Mr. Stegmann make any effort to sell that?

A. No, we went up and talked to a person I knew at Stevenson, but there was too much snow and stuff on the ground to go up there.

Q. So the result was you were not able to make any deal on that timber? [1122]

A. No.

(Testimony of James Kaldenberg.)

Q. Was it about that time that you and Mr. Stegmann terminated your relationship?

A. No, it was later on.

Q. About what date was it, your last business deal with Stegmann? A. I think in May.

Q. May of 1952? A. Yes.

Q. And you have had no dealings with him since then? A. No.

Q. Or with Mr. Parker? A. No.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. Did you say you had a talk with Parker at some time or other? A. Yes, in my home.

Q. About what?

A. Well, just like all the rest of the gyppo loggers, lots of us ain't got enough money to finance the timber so I happened to be in a tavern. I happened to hear his name mentioned. They said he would finance timber. I called him at McMinnville. I don't know what number it was. Him and his wife came to see us. He told me if we needed any help, I mean any financing of any [1123] big timber deals or anything like that, he would come out and check it over, and if it was all right, he would finance it.

Q. Also there was talk about buying a donkey from him, wasn't there?

(Testimony of James Kaldenberg.)

A. Yes, but that was before I even knew them hardly at all.

Q. Oh, that was before this talk? A. Yes.

Q. But you never called on him for any financing, as I understand it? A. No.

Q. When was this—you say that was in 1952?

A. Oh, 1951, in the fall.

Q. 1951? A. Yes.

Q. Didn't you say in your direct examination it was 1952? A. What?

Q. Didn't you say a little while ago it was 1952?

A. Maybe I did, but it was '51. That is the truth.

Q. Could you give us an idea of the month?

A. It was in October or November.

Mr. Ryan: Excuse me, was that '52?

The Witness: '51.

Q. (By Mr. Jaureguy): That earlier talk about the donkey engine and this talk where he and his wife said that if you needed some financing, why, they would be glad to talk to you——

A. Yes. [1124]

Q. ——those are the only talks that you have ever had with Parker?

A. Well, I didn't talk to Mr. Parker about the donkey. I was talking with Mrs. Parker.

Q. You didn't with Mr. Parker about the donkey? A. Mrs. Parker.

Mr. Strayer: Mrs.

The Witness: Mrs. Parker about the donkey.

(Testimony of James Kaldenberg.)

Q. (By Mr. Jaureguy): Mrs. Parker about the donkey, and the two of them about financing?

A. Yes.

Q. Then you and Stegmann bought from three to four hundred thousand feet for \$1,500?

A. Yes.

Q. And sold it for \$2,500? A. Yes.

Q. You didn't need any financing for that, I don't suppose? A. No.

Q. Stegmann had some cash for that?

A. Yes.

Q. Did Parker bid against you and Stegmann on the Northwest Door?

A. Well, that there I never, well, no—he got it.

Q. Stegmann got it; he bought it—I mean, Parker bought it? A. Yes.

Q. And so he must have bid for it if he [1125] bought it? A. Yes.

Q. Where were you and Mr. Stegmann going to get the money in case you got the bid?

A. I don't know.

Q. You don't know about that? You put in a bid, did you? A. We put in a bid.

Q. You didn't have to put any certified check in with your bid?

A. No; we just put in a verbal agreement on bid.

Q. Did you tell them, the Northwest Door, Mr. Ossler or any of them, that you were bidding but you would have to go out to get some money if you got it? A. No; never asked us.

Q. Was this oral, or did you write a letter?

(Testimony of James Kaldenberg.)

A. No; it was oral. We went right up to the office, talked to Ossler in the office.

Q. Where was the office? A. Tacoma.

Q. Tacoma, and you made an offer of some kind, didn't you? A. Yes.

Q. Then later you found out that Parker had bought it? A. Yes.

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Ryan:

Q. Isn't it a fact, Mr. Kaldenberg, that the deal you and Mr. [1126] Stegmann were going to make with Northwest Door was this, that you paid \$70,000, but you inquired at the time what was the least amount you would have to put down to make that deal? A. Yes.

Q. What did they tell you?

A. \$25,000, I think.

Q. \$25,000, and did you carry the deal any further from there?

A. No; we wrote them a couple letters, and they wrote back, and that was the end.

Q. You never went out to get the \$25,000?

A. No.

Q. Now, after this Northwest Door deal, isn't it a fact that you borrowed \$750 from Walt Stegmann or \$700 and some odd dollars?

A. Well, it went down the line from while he was out there when I first knew him until afterwards when it was kind of hard going.

(Testimony of James Kaldenberg.)

Q. He did loan you some money during this period? A. Yes.

Q. You have repaid him? A. Yes.

The Court: You are not on friendly terms with Mr. Stegmann, are you?

The Witness: No, I ain't unfriendly to him. I don't—I don't know what to say.

Mr. Ryan: I have no other questions. [1127]

Cross-Examination

By Mr. Krause:

Q. Mr. Kaldenberg, I didn't get this. The first time you met Parker was in October of 1951?

A. Around that time.

Q. Around that time? A. Yes.

Q. That is the only time you saw him?

A. I didn't see Mr. Parker then. I seen Mrs. Parker.

Q. Well, that was on a donkey deal?

A. Yes.

Q. You saw her at that time, but when was the first time you saw him?

A. It must have been about in November, sometime the first part of November or last part of October, about a month after, I guess, something like that.

Q. Now, did he tell you anything about Stegmann at that time? A. No.

Q. When Stegmann called on you thereafter, had you ever met Stegmann before? A. No.

Q. Did you have any idea about how Stegmann

(Testimony of James Kaldenberg.)

had come to see you? A. No.

Q. Stegmann didn't tell you how he happened to come? [1128]

A. Well, he said something when he come there that he come to help me. He heard that I had a few patches, little patches of timber around there, and I told him then that I didn't have any money for financing any timber, and he said, well, he could get the money financed from—if we had big patches or good patches we could get it from Parker.

Mr. Krause: I think that is all.

Redirect Examination

By Mr. Strayer:

Q. Did Mr. Stegmann ever indicate how much, how large a deal he could finance?

A. No, he said he could go up to \$80,000 if he had to.

Q. When you paid \$70,000 on that Northwest Door timber, did you and Mr. Stegmann have any understanding about how that was going to be financed? A. No.

Q. When you learned that \$25,000 had to be paid down, did you and Stegmann discuss how it might be handled? A. No, not at that time, no.

Q. Did you later on? A. No.

Q. Well, I'm a little confused in my mind. How did you drop that? Did you consider that was too big a deal to swing, or what was the reason?

A. No, I never figured we had to have a down payment until the [1129] bids come up. He told us

(Testimony of James Kaldenberg.)

that he would have to talk to the president of the company and ask about what we would be willing to pay for the timber.

Mr. Strayer: I see. That is all.

The Court: You had written two letters to the Northwest Door?

The Witness: Yes.

The Court: Did you get answers to the letters?

The Witness: Yes.

The Court: What were the answers?

The Witness: Well, later on they said—the first letter said that they were going into conference about it and they would let us know. The second letter later on said that the timber was disposed of.

Mr. Strayer: The timber had been sold?

The Witness: Yes.

Mr. Strayer: That is all.

Mr. Krause: You and Mr. Stegmann live in the same town in Washington, don't you?

The Witness: No; I live about 7 miles.

Mr. Krause: You live outside, but you live in the same areas as he does?

The Witness: Yes.

Mr. Krause: Are you known to be in the timber trading business, logging business, in [1130] Washington?

The Witness: Yes.

Mr. Krause: That is all, your Honor.

The Court: That is all.

(Witness excused.) [1131]

GLENN JOHNSON

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Johnson, where do you live?

A. McMinnville, Oregon.

Q. What is your occupation?

A. Car salesman for Gilbert & Tilbury.

Q. What was your occupation in November and December, 1950?

A. Used car salesman for Gilbert & Tilbury.

Q. That is a car dealer in McMinnville, is that correct?

A. That is correct.

Q. Do you recall an incident, either the latter part of 1950 or the forepart of 1951, when Mr. Chet Parker—first I will ask you, do you know Mr. Chet L. Parker?

A. Yes, I do.

Q. Do you know Walter Stegmann?

A. I know him by sight.

Q. Do you recall an incident along about that period of time when Mr. Parker came in and wanted to trade in a 1948 Jeep on a used Jeep pickup?

A. Yes, I do.

Q. Could you pinpoint the time at all as to whether it would be in 1950 or 1951? [1135]

A. I believe it was the very latter part of 1950.

Q. When Mr. Parker came in with that proposed deal, did he talk with you?

A. Pardon?

(Testimony of Glenn Johnson.)

Q. When Mr. Parker came in, did he talk with you?

A. My sales manager and myself were standing on the sidewalk and Chet Parker drove up to the curb and talked to both of us simultaneously.

Q. What did he say he wanted?

A. He said he was interested in this 1949 Willys pickup and wanted to know what difference we thought we should have.

Q. In other words, when you say what difference you thought you should have, you mean cash difference in addition to trading in some car he already had?

A. That is correct.

Q. Do you recall what he had that he wanted to trade in?

A. A 1948 civilian Jeep.

Q. Did you or your used car manager quote him a price for the difference?

A. We did, and I don't remember the exact amount. I believe it was about \$800.

Q. Did Mr. Parker make any offer at that time?

A. Yes, I think he offered four, and in a little controversy I think he said he would go five hundred.

Q. What happened then?

A. Well, then, my manager said that he would not go for five, [1136] so Chet said, "Think it over." He had done business there for several years in the past years, and he just drove up and said, "Think it over."

Q. Then following that incident, did Mr. Walter Stegmann come in to your place of business there

(Testimony of Glenn Johnson.)

inquiring about the possibility of purchasing a Jeep?

A. Yes, he did. I would judge it would be about a week later. I don't know the exact days later, but approximately a week later.

Q. What kind of a Jeep did he say he wanted?

A. A late model, somewhere around in the neighborhood of 1948 civilian Jeep in good shape.

Q. What did you tell him?

A. I told him I didn't have any in stock, but I did have a possibility of trading for one, of two different Jeeps.

Q. What were the two different Jeeps that you had in mind?

A. One was Charley Steller's at Yamhill, and the other was Chet Parker's.

Q. Did you tell Mr. Stegmann whose Jeeps you had in mind?

A. Yes, I did.

Q. Were you able to quote him any price at that time?

A. At that time I didn't. I suggested either I take him out there the following day or that he could see them himself, and it would be arranged in a three-way deal, you might term, which is not extraordinary. It happens many times. [1137]

Q. What did he say with that? Did he say he would go with you or take a look at them himself?

A. He said he thought he had time that day, that he would look at them himself.

Q. Then did he come back later?

A. Yes, he came back later.

(Testimony of Glenn Johnson.)

Q. About how much later, do you recall?

A. I don't recall whether it was the same day, later on in the afternoon, or the next day.

Q. Well, what did he say when he came back?

A. He said he was interested in Chet Parker's because it was a Jeep in the condition in which he was interested.

Q. Did you make any kind of a deal with him on it?

A. Yes, we arrived at a figure of \$1,350 retail price on Chet's job, and at that time he made—we drew up a retail order for him, and he made a \$50 deposit, which you might term earnest money, on Chet's Jeep, on his 1948 Jeep.

Q. Then what was the next thing that you did in reference to the transaction?

A. Then the next thing was either the general manager or sales manager, I don't know which, called Chet and told him that we had a deal on his unit at which we could come down to his figure and deal with him on the unit that he was interested in.

Q. Did he come into the shop there in response to that call?

A. Yes, and then Chet came in and we consummated the deal between Chet and us. [1138]

Q. Were you present when he was down?

A. Yes.

Q. What was the price that you arrived at, the difference for the—in addition to the trade-in of the '48 Jeep?

A. \$450.00.

Q. Was that paid by Mr. Parker?

(Testimony of Glenn Johnson.)

A. Yes, it was.

The Court: In other words, did you allow him \$800?

The Witness: No, it would be nine hundred over thirteen, yes, nine hundred.

Mr. Buell: I think, if the Court please, Mr. Johnson's testimony was that the original deal was that Gilbert & Tilbury wanted \$800 cash in addition to the '48 Jeep for the transaction; is that correct?

The Witness: That is correct.

The Court: He finally got \$500?

The Witness: \$450, difference between the two.

Q. (By Mr. Buell): What was the next step after that, sir?

A. Well, then, I contacted, or by mail, I mailed Mr. Stegmann a card telling him that we had consummated the deal with Mr. Parker on this '48 Jeep and had it in stock now and which he had a deposit on, to come in and get his unit.

Q. Did he come in?

A. Yes, he came in and said he had difficulties which prohibited him from continuing or taking the unit, taking delivery of it. [1139] He had to give up the purchase of the vehicle.

Mr. Buell: We have no further questions.

Cross-Examination

By Mr. Jaureguy:

Q. How much earnest money did you get from Stegmann? A. \$50.

(Testimony of Glenn Johnson.)

Q. \$50, and he forfeited that?

A. Yes, in accordance——

Q. So you finally ended up the same way you were on the first conversation with Chet?

A. So far as the company was concerned, yes, and of course the two didn't have any bearing on that to begin with. As a result, yes, that is what happened as a result.

Q. Chet Parker had bought a lot of equipment from your company, hadn't he?

A. Yes, he had.

Q. Had he always paid for it promptly?

A. Yes, sir, cash.

Q. In this case he paid \$450 cash, did he?

A. Correct.

Q. So you ended up just the way you were the first time he talked to you except that you were out your trouble in talking to Stegmann?

Mr. Strayer: Well, just a moment.

The Court: No, he is out \$250. [1140]

Mr. Jaureguy: I didn't get that.

The Court: Offered eight.

Mr. Jaureguy: Let me ask, your superior, the man that was with you, offered it to Chet for \$800 difference?

The Witness: I believe that was the figure that he asked.

Q. (By Mr. Jaureguy): But he came down to five hundred before the conference was over, is that right? A. No.

(Testimony of Glenn Johnson.)

Q. Oh, he didn't?

A. There was no consummation of the deal at that time.

Q. I understand no consummation, but that he had come down to five hundred if Chet wanted to take it at that price?

A. No.

Q. Oh, that was not it?

A. No, Chet offered five hundred as a standing offer, and they decided not at that time to—they wouldn't go for that figure, so Chet said, "Well, think it over," and drove off, which is quite customary with all customers of ours, and we just bore that in mind if we at a later date found someone that is interested in their vehicles. Sometimes we can arrange a better figure for them.

Q. But when you arranged the deal with Stegmann did you have in mind \$500 from Parker, or did you have in mind getting more than that from Parker?

A. We had in mind getting five hundred then, in other words, [1141] going to his offer rather than ours.

Q. Oh, yes, and then, but when he came in, then he wanted to make a deal for four hundred and fifty?

A. Well, yes, that goes into the monkey business of car-jockeying.

Q. You said something here was not extraordinary. Wasn't that extraordinary for somebody to jockey around on used car prices?

A. No, that is not extraordinary.

(Testimony of Glenn Johnson.)

Q. Quite common?

A. That is very common.

Q. Does Chet Parker owe your company anything; do you know?

A. It wouldn't be to my knowledge if he did. I don't think he does.

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Ryan:

Q. Mr. Stegmann told you he had some personal difficulties that made him unable to go through with the deal?

A. That is as I recall it. As I recall, it was sickness in the family. I don't know exactly as that was right, and, as I remember, it was some personal difficulties that prohibited him from going through with the original deal that we had agreed on.

Q. Would it refresh you at all if I asked him if he told you he had to take his wife to California on doctor's orders?

A. That is right, you are right. [1142]

Q. You retained the \$50 earnest money?

A. That is right.

Q. That was the end of the deal?

A. That was the end of the deal.

The Court: Did Mr. Stegmann tell you he was a good friend of Chet Parker when you told him about that car?

The Witness: No, sir. He never mentioned Mr.

(Testimony of Glenn Johnson.)

Parker's name. I mean, the two related to each other in any way was never mentioned or brought to my attention.

The Court: He didn't mention that he knew Chet Parker?

The Witness: No.

The Court: How did he know where to find Chet Parker? Did you tell him where he lived?

The Witness: No, I didn't, but Chet is well known there. It would not be hard to find him at McMinnville. I mean, he could have asked any number of people. They could have told him.

The Court: When he came back and told you that he liked Chet Parker's Jeep, did he tell you then that he was acquainted with Mr. Parker?

The Witness: No, sir.

The Court: That is all.

Recross-Examination

By Mr. Jaureguy:

Q. Well, all three of you lived there in McMinnville. [1143] A. Pardon, sir?

Q. All three of you lived there in McMinnville?

A. Yes, sir.

Q. You had known both of them for some time, had you not?

A. You mean did I know Mr. Stegmann?

Q. Stegmann and Parker.

A. No, sir.

Q. You had known Parker for some time?

(Testimony of Glenn Johnson.)

A. I had known him as a speaking acquaintance, not a personal friend, but as a speaking acquaintance. I know Mr. Stegmann only as by sight. The first time I had seen him was when he come on the lot.

Mr. Jaureguy: That is all.

Mr. Ryan: No questions.

Mr. Buell: I have nothing further.

Cross-Examination

By Mr. Krause:

Q. Did you fix the time that this occurred?

A. No.

Mr. Strayer: Pardon me, the date of Mr. Parker's check for \$450 was December 1, 1950.

The Witness: Well, that would be it.

Mr. Strayer: I beg your pardon, no, wait a minute, yes, December 1, that's right.

The Court: 1950?

Mr. Strayer: Yes. [1144]

Q. (By Mr. Krause): How long prior to December 1 did that deal start, approximately? That is, that was the date on which Parker took delivery of that Willys? A. That is correct.

Q. And paid you by check. Now, how many days before that did Parker first come in with the proposal to trade?

A. I should judge about a week.

Q. You should judge about a week?

A. Yes.

(Testimony of Glenn Johnson.)

Q. And Stegmann came in after Parker had been in the first time? A. That is correct.

Q. Did he pay you this deposit? Was that in cash or by a check?

A. I don't recall whether it was or which way it was. Our books would show it, the company's books.

Q. It would show whether it was cash or check?

A. Oh, yes, but I don't recall now.

The Court: Will you check your books to determine whether it was a check or cash?

Mr Buell: I think I can help the Court out on that. I called their office again today to see if there was any way of trying to tie that down, and talked with Mr. Rogers, who is office manager, and to Mr. Cohen, and upon further looking they advised that it was by cash and that they had a record of a receipt dated November 28, 1950.

The Court: It was cash, and not a check? [1145]

Mr. Buell: Yes. I can get them to confirm that by letter.

The Court: I do not think it is necessary.

Mr. Ryan: We won't require any confirmation of that.

The Court: That is all.

(Witness excused.)

Mr. Strayer: Now, in this connection I call the Court's attention to the fact that the Parkers' checks which are in evidence, there is one for \$50 from Parker to Walter Stegmann dated November 29, 1950.

The Court: When was the cash given?

Mr. Buell: November 28th. [1146]

FORREST DAVIS

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Davis, where do you live, sir?

A. Willamina, Oregon.

Q. Did you obtain an option of some property of Mr. Chet L. Parker in Section 12, the west half of the northwest quarter of Section 12, on the Pea Vine Road just outside of McMinnville last year?

A. Yes, I did.

Q. Who was it that first — that was an 80-acre tract, was it? A. Right.

Q. Who was it that first advised you of the property? In other words, how did you learn — from whom did you learn of the property?

A. A Mr. Wardell.

Q. Is that Paul Wardell? A. Right.

Q. Is he the man that used to run a store at Buell, Oregon? A. That is right.

Q. Do you have any of the options that you acquired on that property? A. I do. [1147]

Q. Did you acquire two options? A. Yes.

Q. Do you have those with you, please?

A. Yes.

(Documents produced.)

(Testimony of Forrest Davis.)

Mr. Buell: While I am interrogating the witness, I will show these to counsel, and they can be examining them.

Q. The purchase price called for in this option was \$35,000; is that right, sir? A. Right.

Q. Did Mr. Wardell take you out and show you the property?

A. Showed me one corner and designated by direction where the rest of it was, the other corners.

Q. Was there timber on the property that Mr. Wardell showed you?

A. About two million feet, board feet.

Q. Then did you make any efforts to attempt to sell the option to somebody else?

A. My first option, about a week I had on the first option.

Q. Whom did you try to interest in that?

A. Oh, various mills and so forth around Willamina.

Q. Then did that option expire before you found a purchaser, did it?

A. Well, no, a Mr. Smith finally was going to buy it before that option ran out. Then I got an extension on it. [1148]

Q. Finally did you find somebody who was going to—or just go ahead and tell the story in your own words. Maybe we can shorten it up a little.

A. Well, then, Mr. Smith, after he decided he couldn't buy it or was not going to, turned as a partner of mine, and we sold it together to a Mr. Hewlitt, the option.

(Testimony of Forrest Davis.)

Q. And it was for how much money?

A. Five hundred.

Q. To whom did you give that check?

A. To Mr. Parker.

Q. Do you have that check with you?

A. Yes, I do.

(Document produced.)

Q. Where had Mr. Wardell gone in the meantime? A. Well, he was with the third-party.

Mr. Jaureguy: He was what?

The Witness: The third-party partner.

Mr. Jaureguy: He was a third party?

The Witness: Yes, sir.

Q. (By Mr. Buell): Did you pay him any money for the——

A. Well, the check was—we were to receive a commission besides the \$35,000 which was to be divided among the three of us.

Q. That would be between you and Smith and Paul Wardell? A. That is right. [1149]

Q. That is, provided that Mr. Hewlitt purchased the property? A. Right.

Q. Then what was the next step in the transaction after you got the \$500 check from Mr. Hewlitt?

A. I endorsed the check at Vancouver to Mr. Parker, and then—it was Mr. Bergstrom who surveyed the land to make sure the corners were established just right.

Q. Who took Mr. Bergstrom out to see the property?

(Testimony of Forrest Davis.)

A. Two employees of Mr. Hewlitt, Mr. Smith, and myself and Mr. Wardell.

Q. Was Mr. Wardell with you when you went out with Mr. Bergstrom? A. I believe so.

Q. Did you point out to Mr. Bergstrom the same property that Mr. Wardell had originally pointed out to you? A. Yes, sir.

Q. What happened when Mr. Bergstrom started to make his survey?

A. Well, before he ever started he said he knew the property we were on was Government timber, and consequently we looked up the quarter corner post, which is a U. S. Geodetic Survey post. The post had been moved 1,320 feet lacking 50 feet. In other words, 1,270 feet east of where it ordinarily would have been placed.

Q. Then did Mr. Hewlitt ever exercise the option?

A. No, at that time it stopped. [1150]

Q. Did you ever get a refund of the \$500 purchase price? A. No.

Mr. Buell: I'd like to have these three exhibits marked, if I may.

(Check from Hewlitt to Davis marked Plaintiff's Exhibit 83 for identification.)

(Document, option, marked Plaintiff's Exhibit 84 for identification.)

(Document, first option, marked Plaintiff's Exhibit 85 for identification.)

(Testimony of Forrest Davis.)

Q. (By Mr. Buell): Mr. Davis, could you tell us where that property that was actually owned by Mr. Parker in that Section 12, where was that located with reference to the Government timber that you just referred to that you said Mr. Bergstrom said was Government timber rather than Parker's?

A. Mr. Parker owned eighty acres west of the 40 acres of Government timber.

Q. On the land that Mr. Parker owns, is there any timber on it?

A. Possibly twenty, twenty-five thousand board feet.

Q. Is that pasture land, or is that logged-over land?

A. That is logged-over land, really not good for anything.

Q. I hand you what has been marked for identification as Exhibit 85, and ask you if that is the first or second option that was given you on the property? A. This is the first. [1151]

Q. And then 84, that would be the second; is that correct? A. That is right.

Q. And this check which has been marked as Exhibit 83, that is the check that you just referred to that was given to you by Mr. Hewlitt and then endorsed over to Mr. Parker; is that right?

A. Right.

Mr. Buell: I have no further questions. We will offer these, but we are going to have to tie it up with additional testimony from another witness.

(Testimony of Forrest Davis.)

Mr. Jaureguy: You say you are offering it now?

Mr. Buell: I say we will have to tie it up with another witness.

Mr. Jaureguy: I wish to move that all the evidence given by this witness be stricken as incompetent, irrelevant and immaterial and having no bearing on the issues of this case.

The Court: I think the theory of it is that Mr. Parker has been guilty of a number of fraudulent actions, all somewhat the same type and character, and that it may be introduced for the purpose of showing intent. Is that the purpose; am I correct in that?

Mr. Buell: That is one purpose. There is another, your Honor, and that is connecting Mr. Stegmann with this transaction.

The Court: How would Mr. Stegmann—I thought it was Mr. Wardell who showed him around?

Mr. Buell: Well, it was Mr. Stegmann who first took Mr. [1152] Wardell out and showed him the property with the timber on it and pointed out the timber for sale. I cannot prove it all by one witness.

The Court: We will take your motion under advisement.

Cross-Examination

By Mr. Jaureguy:

Q. What did you say was moved for a quarter mile?

A. A U. S. Geodetic Survey post, which is 36-

(Testimony of Forrest Davis.)

inches long, $2\frac{1}{2}$ in diameter, with a three-inch cap, bronze.

Q. How do you know how long it is?

A. Well, the standard, that is the standard U. S. Geodetic Survey post.

Q. Where did you learn that?

A. Well, I have dealt in timber a little bit here and there.

Q. Have you moved any of them yourself?

A. Not over a dozen.

Q. Not over a dozen? A. No, none.

Q. Now, ordinarily there is a bearing tree of some kind in connection with these corners; is there not? A. Yes, sir.

Q. Was the bearing tree moved, too?

A. No, sir.

Q. That was back where it was supposed to be?

A. Right. [1153]

Q. You don't know who moved this Geodetic Survey marker? A. No, sir.

Q. Nor when it was moved? A. No.

Q. Has anybody ever purported to tell you when it was moved or by whom? A. No.

Q. Now, when you first got an option from Mr. Parker, he said you could have it for nothing, didn't he? A. Yes, ten dollars.

Q. What is that?

A. With the exception of ten dollars.

Q. Well, didn't he tell you that he would receipt that you gave ten dollars, but you didn't even pay him anything? A. Yes, right.

(Testimony of Forrest Davis.)

Q. And that he urged you to take it for nothing, and you insisted you wanted some money, I mean, you wanted to pay for it; that is correct, isn't it?

A. No.

Q. That is not correct. Then, did you go up to his attorney, or did he go up to his attorney to have the option prepared?

A. I went up to his attorney along with Mr. Wardell and Mr. Parker.

Q. I beg your pardon?

A. I went up to his attorney along with Mr. Wardell and Mr. [1154] Parker.

Q. I am talking about the first option.

A. I don't remember offhand.

Q. That first option you got when you went up the first time, you didn't pay anything for the option, did you? A. Right.

Q. He gave you that for nothing?

A. Right.

Q. Then when you wanted an extension, he wanted to give you that for nothing, too, didn't he?

A. No.

Q. He didn't. And then you went up—did he go up to the attorney's with you again that time?

A. Yes.

Q. At that time you wanted to pay \$500, and didn't Mr. Crow—Mr. Crow then telephoned to Mr. Parker and said you were there? A. Right.

Q. And wanted to pay \$500; is that correct?

A. Partially.

Q. Well, what is wrong with it?

(Testimony of Forrest Davis.)

A. Well, at that time Mr. Parker came up, and I had the check for \$500, but my time on my first option had run out.

Q. Well, after this conversation, you went to Vancouver and took the check with you to Vancouver, didn't you? A. Yes, sir. [1155]

Q. Well, but I am talking about now, about the telephone conversation between Mr. Crow, who was Mr. Parker's attorney, when you were there but Mr. Parker was at his home, and do you remember Mr. Crow calling Mr. Parker by phone and saying you wanted to pay \$500? A. Yes.

Q. Did you hear the answer that Mr. Parker gave over the phone? A. No.

Q. Did Mr. Crow tell you what Mr. Parker said over the phone? A. Yes.

Q. Did he tell you that Parker said he didn't want the \$500; you could have the extension without paying for it? A. I don't remember.

Q. But it would be all right to receipt in there that you paid five hundred, but that he didn't want the five hundred?

A. The option called for five hundred.

Q. I am not asking you that. I am asking what Mr. Crow told you at the time. A. No.

Q. This may seem funny to you, but it is not funny to us. Just answer our questions, please.

Will you read the question, please?

(Last question read.)

Q. Is that correct? [1156]

A. I don't know.

(Testimony of Forrest Davis.)

Q. How did you happen then to take the check out to Mr. Parker's instead of leaving it with Mr. Crow?

A. Well, Mr. Parker evidently, over the phone, according to Mr. Crow, said it would be all right for us to deliver the check to him in Vancouver.

Q. Well, as a matter of fact, didn't Mr. Crow say that Mr. Parker said you could have the extension for nothing? A. I don't know.

Q. You don't know that. Now, do you mean to be charging that Mr. Parker here moved the quarter corner? A. No.

Mr. Strayer: I object to that, your Honor. It is not the witness' purpose to make any charges.

Mr. Jaureguy: He is making many, though. What do you mean here? I can ask him whether he means to charge it.

Q. Your answer is "no," as I understand it?

A. Right.

Q. Do you mean to intimate that somebody tried to put over a fraud on you by moving that corner?

A. I have no way of knowing. Mr. Parker never showed me the timber or the ground.

Q. What is that?

A. I have no way of knowing. Mr. Parker never showed me the timber nor the ground. [1157]

Q. As a matter of fact, Mr. Parker never purported to go up and show you any of his property, did he? A. Right.

Q. The only one that showed you the property was Wardell? A. Right.

(Testimony of Forrest Davis.)

Q. Now, let us see who these other people are. That was you and Smith that were in together?

A. Yes.

Q. Davis and Smith, and then how did Wardell get in on it? A. He introduced me to it.

Q. He introduced you to whom?

A. To the——

Q. To the deal? A. To the option, yes.

Q. Then didn't he get interested in it some way or other, didn't you say?

A. He had a partnership in the \$5,000 that was supposed to be paid as our bonus for the sale.

Q. That is, you were to sell the option for Hewlitt? A. Yes.

Q. For how much?

A. A settlement of a, total settlement of \$5,000 with \$500 down.

Q. He paid the \$500 down?

A. Correct. [1158]

Q. And then he was supposed to pay \$4,500 more cash? A. Right.

Q. Wardell had an interest of how much in the \$1,500? How did he get that?

A. Well, we were partners on it.

Q. I beg your pardon?

A. We were in partners on it.

Q. That is, you and Davis and Smith were in partners on that? A. Correct.

Q. You and Wardell and Smith?

A. Right.

Q. Who got that \$500?

(Testimony of Forrest Davis.)

A. The check was made payable to me and I turned it over to Mr. Parker.

Q. That is the same check that you insisted on paying for the extension of the option?

A. That is the same check that I paid Mr. Parker, right.

Q. That is, you handed him Hewlitt's check?

A. Right.

Q. Then, in addition, you were to get a commission? A. Yes.

Q. Who were you to get that from?

A. Mr. Hewlitt.

Q. Well, he was the buyer?

A. Right. [1159]

Q. You mean you were to get the balance of \$5,000 as your commission? A. Right.

Q. Then Hewlitt was going to sell it to somebody named Bergstrom; is that right?

A. I don't know.

Q. Didn't you say that Hewlitt's employees went out to show it to Bergstrom?

A. Bergstrom is a surveyor. He does Mr. Hewlitt's surveying for him.

Q. And Mr. Bergstrom then went out and found out that the quarter corner was located in the wrong place? A. Right.

Q. Was it located exactly on where another quarter corner was supposed to be? A. No.

Q. But the bearing tree had not been moved?

A. Right.

(Testimony of Forrest Davis.)

The Court: We will take a short recess.

(Recess taken.)

Mr. Jaureguy: No more questions.

Mr. Ryan: I have no questions.

The Court: Mr. Krause, did you interrogate this witness?

Mr. Krause: I have not, your Honor, and I do not think we have anything. [1160]

The Court: Are you through with him?

Mr. Buell: That is all.

(Witness excused.) [1161]

C. O. BERGSTROM

a witness produced on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is C. O. Bergstrom, is it not?

A. Yes, sir.

Q. Where do you live, Mr. Bergstrom?

A. Five miles southwest of McMinnville.

Q. What is your occupation?

A. I do timber cruising and one type of surveying, and then I live on a ranch.

Q. Did you undertake to locate the lines on the west half of the northwest quarter of Section 12, in Township 4 South, Range 6 West?

A. Yes, sir.

(Testimony of C. O. Bergstrom.)

Q. When did you undertake to do that?

A. Well, I have been up there a dozen times, and I couldn't just remember. I was up there in June, 1950, 14th of June, and I was up there in June 5 and 6 in 1951, but that is the only dates I can remember.

Q. What was the date that you went up on behalf of Mr. Hewlitt, Hewlitt Logging Company?

A. July 29, 1952.

Mr. Jaureguy: I didn't get the last year. [1162]

The Witness: 1952.

Q. (By Mr. Buell): Who did you go up with?

A. There was Roy Hirst and Mr. Davis and Mr. Smith.

Q. That is the Mr. Davis who was just on the stand?

A. Yes, sir, and then a man that worked with me, C. P. Rosenbaum, was with me.

Q. You were employed by Mr. Hewlitt; is that correct? A. Yes, sir.

Mr. Buell: I think probably the quickest way we can handle this is if we can have a blackboard, and Mr. Bergstrom could put in his testimony a little quicker, I think.

The Court: Bring that blackboard.

(Blackboard produced.)

Mr. Jaureguy: This all goes in under our objection, and we may have to ask for a postponement in order to get our witnesses to testify.

Mr. Ryan: Your Honor, we would like to enter

(Testimony of C. O. Bergstrom.)

an objection at this time as to the relevancy of this testimony.

The Court: I don't know the relevancy at this time. There has been no evidence that Mr. Parker or Mr. Stegmann knew that the stakes had been moved, but I don't know what the other testimony is going to be. Proceed.

Q. (By Mr. Buell): Would you come down and take that piece of chalk there, please, and just draw in the section involved so that we can see it on the blackboard? [1163]

(Witness draws on blackboard.)

A. This would be the west half of the northwest quarter of Section 12 (indicating).

Q. Would you put diagonal lines through that, through the west half?

(Witness draws on board.)

Q. Now, where was the closest quarter corner to that west half of the northwest there?

A. This one here (indicating). Right beside 12.

Q. And when you arrived at the property there, where had you found the quarter corner?

A. I found the stake over here, approximately 1,280 feet from the 16th corner.

Q. That would be east?

A. East of the quarter corner.

Q. Would you please indicate on there, if you will, where the property—where the west half of the northwest quarter of that section would have

(Testimony of C. O. Bergstrom.)

been if, in fact, the corner post belonged where you found it when you got out there?

A. That would be east to here (indicating).

Q. You put a dot in the center of that?

A. Yes.

Q. Do you know whose property the two forty-acre tracts is that you just indicated there with a dot?

A. This one here is the southeast of the northwest and belongs [1164] to Mrs. Anderson, and this one belongs to the Government (indicating).

Q. That is the Oregon-California——

A. Land grants.

Q. Land grants.

A. Or it may be public domain. I wouldn't know that.

Q. Referring to the actual property itself with the corner in the right place, was there any timber located on the property of Mr. Parker's, the west half of the northwest?

A. There was a small patch of trees right up in this corner here, the northeast corner of that property, but they may have logged it because they were logging when I was in there.

Q. Now, on what is actually the east half of the northwest quarter there, where is the timber located on the property?

A. The northeast of the northwest.

Q. Which is the——

A. This forty up here (indicating).

Q. The Government timber?

(Testimony of C. O. Bergstrom.)

A. That is Government forty.

Q. Is there any timber on the forty acres of Mrs. Anderson? A. No, that is logged.

Q. Have you any opinion as to the total amount of timber on the Anderson and Government forty-acre tracts?

A. There is nothing on the Anderson forty. That is logged.

Q. I see. How about the Government? [1165]

A. The other one, I have been through that a couple of times, and there is two million feet minimum.

Q. You may retake the stand, if you will, please.

(Witness resumes witness stand.)

Q. Now, you mentioned that the west half of the northwest quarter had been logged. Do you know when that was logged?

A. No, I don't rightly remember, but I think it was in '50.

Q. Who was doing the logging on it?

A. There was a man by the name of Hadley that was running a crew out there and had charge of the logging, and he said he was doing it for Lewellen in Washington.

Q. Did you ever talk to Mr. Lewellen?

A. No, I never have.

Q. Now, at the time you went out there and looked at those lines for Mr. Hewlett, do you have any opinion as to the value of the timber located on the west half of the northwest?

(Testimony of C. O. Bergstrom.)

A. No, I have not. I never cruised it.

Q. Well, was there any timber on it?

A. Well, it was all felled and bucked when I went up there to check those lines, all but the north-east corner.

Q. When was that?

A. That was when Lewellen, when Mr. Hadley was logging it.

Q. No, I am referring to the time when you went out there with Mr. Davis, Mr. Hirst and Mr. Smith.

A. Well, it was all logged at that time except that corner up there. I don't know about that because I didn't go up there. [1166]

Q. Would you have any idea as to the total number of feet? A. In the 80 acres?

Q. Yes. A. No, sir.

Q. Was that 80-acre tract worth \$35,000?

A. I couldn't say, but I would say not, but I wouldn't know for sure.

Mr. Buell: No further questions.

Cross-Examination

By Mr. Jaureguy:

Q. Did you know Chet Parker?

A. First time I have seen him.

Q. You do not know anything about him?

A. No.

Q. You do not have any idea who moved that corner? A. None whatever.

Q. That stake? A. None whatever.

(Testimony of C. O. Bergstrom.)

Q. You call it a stake?

A. It is an iron pipe with a brass cap.

Q. Do those caps have the bearing trees?

A. The bearing tree is usually quite a ways from the caps.

Q. Would any description of the property indicate where the bearing tree is?

A. No, that would be in the field notes at the court house. [1167]

Q. Any surveyor of any experience at all that went on the property, property like that, would he be deceived by the stake having been moved?

A. Not if he really looked for it.

Q. How did you know that it had been moved? Now, just give us your own experience.

A. Because I had been up there probably a dozen times before when it was in the right place.

Q. When was the last time you were up there when it was in the right place?

A. (Consulting notes): About '51, in June.

Q. About June, 1951, it was in the right place?

A. Yes.

Q. If you had not been up there before would you have been deceived by it?

A. No, I—well, if I had never been on the section I might have been for a little while.

Q. For a little while? A. Yes.

Q. And then how would you orient yourself to find out where you were?

A. Well, I would have checked from some other corner.

(Testimony of C. O. Bergstrom.)

Q. Would that be proper practice for a surveyor to do? A. Yes, sir.

Q. Which other corner do you generally look for? [1168]

A. Well, in this case I would have looked for the quarter on the north side of 12. When I find no bearing trees on a stake, why, I look for the next corner.

Q. Does the section corner have the bearing tree, too? A. They have four of them.

Q. So that a fair surveyor with any experience would have not been deceived any great length of time on it? A. No, that is right.

Mr. Jaureguy: That is all.

Mr. Lindsay: I have no questions. Would a person who had no surveying experience be likely to be deceived by that stake having been removed?

A. Yes, sir.

The Court: Any further questions?

Mr. Buell: Nothing further.

Examination

By the Court:

Q. When did you go up with Mr. Davis and these other people? A. June 29th of 1952.

Q. 1952? A. Yes.

Q. You had been up there in the summer of 1951 when the pipe or stake was in the proper place?

A. Yes, in June, 1951, and in June, 1950, was two times that I had been up there, but I had been

(Testimony of C. O. Bergstrom.)

up there probably three or four times besides that when the stake was in. [1169]

Q. You say that on the two forties, the northwest quarter of the section, there was only a small patch of timber on the northeast corner?

A. That is right.

Q. About how many thousand feet would there be?

A. Oh, I should judge there was probably twenty-five or thirty thousand.

Q. Well, that would not be worth twenty-five or thirty thousand dollars, would it?

A. Oh, no, no. Mr. Hadley didn't take it out because he said it was not worth while to go that far for that.

The Court: That is all.

Mr. Buell: I have one further question.

Q. Did you report the fact that the corner had been moved to the Government?

A. Yes, I was working over on Section 8 in the same township, and there was two Forest Service men come by, and we got to talking. I asked them what they done with the tag that is supposed to be on the road. They kind of laughed, said it was still there. I told them they had better go and look, and they went back and replaced the tag, but the iron post is still gone.

Mr. Jauregui: They replaced what, the tag, you say?

A. A yellow tag that they usually put alongside the road to tell how far it is to the corner.

(Testimony of C. O. Bergstrom.)

Q. What had happened at that place?

A. That had been moved with the iron stake down to where they [1170] put it and nailed on a tree down there.

Mr. Jaureguy: All right, that is all.

(Witness excused.) [1171]

RANDALL S. JONES

a witness produced in behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Jones, you are the Secretary of the McCormick Lumber and Manufacturing Company, are you? A. That is right.

Q. Were you subpoenaed to appear here and bring with you the check of the McCormick Lumber and Manufacturing Company, in the sum of \$5,300, payable to Walter Stegmann in payment for certain timber which the company had purchased from Mr. Stegmann in '51? A. I was.

Q. Will you hand that check to the—or, do you have the check with you? A. I do.

Q. Would you hand that to the Clerk, please.

(Check of McCormick Lumber and Manufacturing Company, No. 07266, May 14, 1951, marked Plaintiff's Exhibit 86 for identification.)

(Testimony of Randall S. Jones.)

Q. This is the check that you just handed to the Clerk; is that right? A. I didn't hear you.

Q. I say, this is the check that you just handed to the Clerk? A. Yes, it is. [1172]

Q. The one that was subpoenaed, which has now been marked as Exhibit 86, payable to Walter Stegmann in the sum of \$5,300, endorsed by Walter Stegmann and Lois Parker. I will ask counsel to have their clients examine the signatures to see if they are genuine.

Mr. Jaureguy: It is all right.

Mr. Buell: We will offer the check in evidence.

Mr. Jaureguy: No objection.

Mr. Ryan: No objection.

The Court: It may be admitted.

(Check previously marked Plaintiff's Exhibit 86 for identification was received in evidence.)

Mr. Buell: No further questions.

Mr. Jaureguy: No questions. Did I get the date of that?

The Court: May 14, 1951. Any further questions?

Mr. Jaureguy: No more.

The Court: That is all, Mr. Jones.

(Witness excused.) [1173]

* * *

Mr. Strayer: This Johnson transaction, your Honor, was the first time that they used this \$10,000 loan arrangement where the checks were written

by Mr. Stegmann and charged to Mr. Parker's account, and then about a week later the property was sold to the McCormick Lumber Company for \$5,300 paid. There are endorsements on the \$10,000 note and also on the \$22,000 note, about a \$2,300 payment.

Now, as I recall the testimony, I don't recall what Mr. Stegmann said, but I believe that Mrs. Parker testified that she recalled Mr. Stegmann had sold something and had paid \$2,300 on the price, but both of the Parkers disclaimed any connection with the Johnson tract of timber.

Now, we think it is material to show that they had some part in the preparation of the contract.

Mr. Jaureguy: Well, I cannot recall the testimony. Mrs. [1183] Parker tells me she testified just exactly what happened to that. She got that money and she applied it on an indebtedness and other things.

I will admit it is in her—that she typed it, if that is going to save anything, because I don't think it is material, and, furthermore, she thinks she did, and so I have not any objection to admitting that she typed that. [1184]

* * *

CHET L. PARKER

recalled, testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Parker, you were in court yesterday when Mr. Davis and Mr. Bergstrom testified concerning the west half of the northwest quarter of Section 12, Township 4 South, Range 6 West; were you not? A. I certainly was.

Q. And those 80 acres were owned by you?

A. When were they owned by me?

Q. When had you bought them?

A. I think sometime in 1950.

Q. You bought it from a gentlemen who lives out here in Milwaukie; did you not?

A. Man and wife, as I remember.

Q. What were their names?

A. I don't remember.

Q. Mr. LeRoy Moore; is that the name?

A. I think that was it, but I am not sure.

Q. How much did you pay for the 80 acres?

A. I paid cash for it, as I remember.

Q. How much was it?

A. I don't remember the amount that I paid for it.

Q. Well, you heard Mr. Buell's statement that it was \$5,000. Does that sound about right. [1204]

A. I heard his statement. I don't know where he got his authority; neither do I remember, but it is

(Testimony of Chet L. Parker.)

somewhere in there, I suppose. It was \$4,500, he said.

Q. That would be approximately correct according to your recollection? A. Yes.

Q. Now, did you log that property after you bought it? A. No, I did not.

Q. You took no logs off it at all?

A. No, I did not.

Q. Do you still own the property?

A. Yes.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Jaureguy:

Q. Well, you give your version of this option that was testified to yesterday.

A. Well, I didn't want to give an option on it to start in with. They wanted an option on it and I told them I didn't think there was any trees on this property, and then Mr. Wardell and Mr. Davis insisted that there was two million feet on it. I told them if there was two million feet on the property that I owned that I wanted \$35,000 for it. I told them, furthermore, I didn't want any dealings with them.

Q. Who were you speaking about? [1205]

A. Mr. Davis.

Q. Mr. Davis?

A. And I have not changed my mind now, either.

(Testimony of Chet L. Parker.)

Q. What about the consideration for that option?

A. I told them they could have it for nothing.

Q. And the first option, did they get that for nothing?

A. Yes, they had to put some amount in it. I said, "I don't want any of your money." So they said, "We will put it in anyway and not pay you then." I said, "That is fine with me."

Q. What about when the renewal came up?

A. I said, "You can have the extension. It won't cost you a penny." I still haven't changed my mind. The man I sold it to was supposed to leave the back forty. He was not supposed to log the back forty, so there could be any amount on it, but I told him absolutely I don't think there was two million feet of timber on it. They told me there was. I said, "If there is two million feet of timber on it, then I want \$35,000 for it," is what I told them.

Q. Did you know at any time they were talking about here that that quarter corner marker had been moved?

A. I had not been up there from the time I was there with the man I logged it for to now. I have never been to those corners since then.

Q. Did you ever know or had heard that it had been moved?

A. No, I don't think it was. [1206]

Q. You mean when the surveyor went up there that he——

A. Well, I wasn't with him. I can't testify it

(Testimony of Chet L. Parker.)

was or wasn't, but I don't believe it was. No one else ever seems to ever think it was. There is a fence line there. There is a fence separating the properties, and you would have to move the fence separating the boundary line. It is ridiculous and impossible. A six-foot bearing tree bears the corners out. I am certain even though I have not been there that that six-foot tree has not been moved. Everyone knows who owns property there everywhere.

Q. At any rate, you did not have any knowledge of any marker being moved?

A. Absolutely, and none of my properties at any time.

Mr. Jaureguy: That is all.

Q. (By Mr. Ryan): Did Mr. Stegmann have anything to do with showing these properties to these people that you know of?

A. Not on my request or anything I had to do with it.

Mr. Ryan: That is all, your Honor.

The Court: Mr. Lindsay or Mr. Krause?

Mr. Krause: I have nothing.

Redirect Examination

By Mr. Strayer:

Q. If Mr. Stegmann showed it to Mr. Wardell, you had nothing to do with it?

A. Absolutely I did not tell him to show it or have anything to do with it. [1207]

(Testimony of Chet L. Parker.)

Q. How did it happen you talked with Wardell about it?

A. Mr. Wardell called up and wanted to buy my property.

Q. He was the one, then, that told you there was two million feet on it?

A. Well, he or Davis, I don't know which one.

Q. How many feet did you think were on it?

A. I didn't think about it either one way or the other. There was snags on the back part of it, and there could be a million feet if a man didn't take them. There couldn't—I didn't think there was two million feet, and I told them so.

Q. Did you believe there was about a million feet?

A. Well, that is purely speculative. I don't know. I never paid much attention. The grown timber was on a piece adjacent to the road and that potential was what I was interested in when I purchased it.

Q. Did you say that you logged that for somebody?

A. No, I did not log it.

Q. What was your statement a minute ago?

A. My statement was that I didn't log it.

Q. No, I mean when Mr. Jaureguy asked you a question, you said something about the man that you logged it for.

A. No, the man that logged it, I sold it to a man, standing in trees, standing up, all the merchantable lying, standing, and being on the property. [1208]

(Testimony of Chet L. Parker.)

Examination by the Court

Q. When was that, Mr. Parker?

A. I don't remember. In 1950 or 1951.

Q. Was that before Wardell showed it to Davis?

A. Well, I presume, I don't know when he showed it to him, but it was before this monkey business come up here.

Q. In other words, you had originally purchased this property for \$5,000, and at the time you purchased it, it had a considerable amount of timber on it, is that correct?

A. That is right.

Q. And then you sold the timber to someone else? Who was that party?

A. Mr. Madden.

Q. You sold him the timber that was standing and also the timber that was cut and lying on the ground; is that right?

A. Well, your Honor, there wasn't any cut.

Q. Well, what did you—you used a phrase here a minute ago about all standing and other timber?

A. Yes, you know, windfalls and stuff.

Q. So you sold that to Mr. Madden?

A. I think that was his name.

Q. Do you know how much you realized from that sale?

A. I think it was \$7,000.

Q. Now, after that, this transaction which you have called monkey business came up between Mr. Wardell and Mr. Davis. At [1209] that time is it your testimony that you told Davis that there was not two million feet of timber, or anything like that?

A. That is right.

(Testimony of Chet L. Parker.)

Q. And you knew that because of the fact that it had been logged?

A. Well, the back forty, Madden said he was not going to log the back forty, and I had not been on there since then.

Q. Was there any timber on that front forty?

A. Oh, yes, yes, it was thickly, green timber.

Q. Now, when you originally purchased it, didn't you cruise it yourself?

A. No, but I walked through it.

Q. How many feet of timber was on the two forties at the time that you walked through it?

A. I figured there was about a million and three-quarters of green timber. Whatever I guessed would be on that back forty. They were very big, however, on the back forty.

Q. One million and——

A. Three-quarters.

Q. What did you sell this timber, the stumpage, for?

A. At that time I sold it for—on the front forty, seven thousand, I think it was. It may have been eight. I am not sure about that.

Q. Did you charge them by the thousand, or did you charge them for the whole tract?

A. No, all of the timber. [1210]

Q. How long had Madden been up there logging?

A. I really don't know.

Q. But he had moved his equipment off by this time?

(Testimony of Chet L. Parker.)

A. Oh, yes, I think so. I had not been up there, but I think he had moved it off.

Q. So when Wardell came to you, and Davis, you had very little doubt that was little or no timber left on these tracts?

A. I figured probably the snags had possibly a million feet in them.

Q. The snags had a million feet?

A. Possibly, yes. There was approximately several hundred snags, they were big ones.

Q. But that wouldn't be worth any thirty-five thousand, or even seventeen, would it?

A. Well, possibly seventeen. I told them it wasn't worth it, and I didn't want to have anything to do with them.

Q. Didn't you suspect that they might be logging at the wrong timber?

A. I asked them, absolutely, I even suggested to them that they might be. That is why I didn't want anything for the option. I didn't want to hurt anybody.

Q. You didn't want anything for the option, and you didn't want to take the \$500?

A. I did not, absolutely.

Q. After they came back and told you that the stake had been [1211] moved and they didn't want to go through with the option, did you return the money to them?

A. They didn't come back and tell me until after I got the money.

Q. Yes?

(Testimony of Chet L. Parker.)

A. And then they said—well, I don't remember, they told me the stake was moved—I didn't refuse to return the money.

Q. Well, did you return the money?

A. No, no, I was—I thought they was trying to put a crooked deal over and I——

Q. You mean you did not think there was any timber on the ground, you thought the \$35,000 was greatly excessive, and then when they didn't go through with the deal you thought they were trying to pull something crooked on you?

A. I still think so.

Mr. Jaureguy: In what respect were they crooked in that, Mr. Parker?

A. Because I absolutely told them that I didn't think there was that much timber on it, and it was not worth it, and I didn't want anything to do with it.

Q. I mean, how was that your deal on that?

A. Well, I had a million feet of snags back there, and I didn't like the looks of this Davis, and I didn't want to deal with him.

Q. I didn't understand whether Wardell was in on the first option or just the extension. [1212]

A. I don't remember whether he was or was not.

Mr. Jaureguy: That is all.

(Testimony of Chet L. Parker.)

Redirect Examination

By Mr. Strayer:

Q. Did I understand that you sold only timber on the front forty to Madden?

A. Well, that was what he said all he was interested in was the green timber.

Q. There was nothing but snags on the back forty. How did that come?

A. Well, it was probably a hundred and fifty or two hundred thousand feet of green timber, I guess, next to the north line, I think it was.

Q. Did Madden have the right to cut the back forty if he wanted to?

A. He was not going to, he said.

Q. Did the contract cover both forties?

A. Well, I don't remember.

Q. Do you know why he didn't cut the back forty?

A. Well, it was snags. We had a bad year in there. We couldn't sell no timber hardly. When he bought it, it was a bad year, the market was not——

Q. That was 1951, wasn't it?

A. I think in 1950.

Q. You didn't buy it yourself in 1950, [1213] December?

A. I think I sold it in the winter of 1950.

Q. You think there was a fence between there and the government land?

A. There is a fence, as I remember, that is bor-

(Testimony of Chet L. Parker.)

dering between my property and another old fellow that lives up—well, the Stegmann property now, I guess it is. There is a fence with posts about 12 feet apart on the line, or it looks like it is on the line, anyway.

Q. Between your property and Stegmann's?

A. Yes, and then there is—there was a cut running—oh, there is a cabin, also on the property to the east of my property is a cabin, a log cabin, also.

Q. That would be on the government land?

A. No, no.

Q. Where is the Stegmann land with reference to the north or south, east or west?

A. West, and there is a fence line between us.

Q. But the government land is east of your, is it not?

A. Well, it is east—I think it is government, I am not sure, east of the northwest of the northwest, Section 12-4-6.

Q. There is no fence between you and the government land, is there?

A. No, no. There is a rock cliff between I and the government property, terrible rock cliff.

Mr. Strayer: That is all. [1214]

Mr. Jaureguy: That is all.

Cross-Examination

By Mr. Krause:

Q. Who drew the option, the original option?

A. I think Mr.—Attorney Crow at McMinnville drew it.

(Testimony of Chet L. Parker.)

Q. Your attorney? A. Well, yes.

Q. You paid him for drawing the option?

A. As I remember, I did.

Q. And the extension of the option, who drew that?

A. I think he did. They came back to the attorney.

Q. Well, you had to go there to sign it, though, didn't you?

A. No; no, I didn't go there to sign it.

Q. They brought the option to you?

A. Yes.

Q. After Mr. Crow had written the extension of the option?

A. Well, as I remember it, Mr. Crow called me at my house and said these people wanted an extension. I said, "Okay, give them an extension and forget about it." But no, they insisted I take \$500 for it, so they appeared at my house at Vancouver with a \$500 check, and then again I didn't want to take their money, so finally after a while people keep twisting your arm, why, you take their money and forget about it.

Q. And, of course, besides bringing the five hundred over to you, they brought over this extension of the option which you [1215] signed?

A. Well, I think it was extension of an option, whatever it was.

Mr. Krause: That is all.

Mr. Jaureguy: That is all.

The Court: That is all, Mr. Parker. [1216]

Defendant's Case

JOHN BLEDSOE

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is John Bledsoe? A. Yes.

Q. You live in Portland? A. Yes.

Q. What is your occupation or profession?

A. Lawyer.

Q. You have been admitted to the Bar in Oregon how long? A. Five years.

Q. With what law firm are you connected?

A. Koerner, Young, McCulloch & Dezendorf.

Q. You have been with that law firm how long?

A. Five years.

Q. Is the Multnomah Plywood Corporation a client of that firm? A. Yes.

Q. Was it a client during the year 1951?

A. Yes.

Q. Have you ever met Mr. and Mrs. Chet Parker? A. Yes. [1226]

Q. Did you ever meet them in connection with any deal or proposed sale from the Parkers to the Multnomah Plywood Corporation? A. Yes.

Q. At that time, in connection with that, were you representing the Multnomah Plywood Corporation? A. Yes.

Q. Was anybody else with them? A. Yes.

(Testimony of John Bledsoe.)

Q. Who was that?

A. Mr. Clyde Smith, Multnomah Plywood Corporation.

Q. Do you know what position he held with the Multnomah Plywood Corporation at that time?

A. I do not know the exact title, but he was engaged in assisting in buying of logs and timber and cruising timber for Multnomah Plywood Corporation.

Q. Could you tell me when it was that meeting took place?

A. It was August 24, 1951, in the morning.

Q. Now, will you just tell us what the discussion was?

A. Well, Clyde Smith called me and asked me to sit in with him and Mr. and Mrs. Parker on working out a couple of details, one of these which involved a sale that the Parkers had previously made to Multnomah Plywood Corporation, and on a contract for a sale of timber, and, as I recollect it, we arranged for a payment and mortgage and the closing of that transaction. We also [1227] discussed the proposed purchase of property which was designated the Lost Lake property.

The purchase price mentioned for the Lost Lake property was, to the best of my recollection, \$180,000. The financing was to be arranged by the mortgaging of some property of Multnomah Plywood's in Southern Oregon.

Q. Was that a different tract that the——

(Testimony of John Bledsoe.)

A. A different tract than the other.

Q. Than either of these other two that you have mentioned?

A. Yes, I can't say exactly what that tract was, but that was mentioned as a possibility for financing it, and I was asked to complete the former transaction to which I referred, that is, the property sold on contract, and to prepare papers for setting up a sale of the Lost Lake property.

Q. Was that first tract, was that known as the Bear Creek tract?

A. I think that is correct.

Then after reaching this tentative agreement, it being understood, of course, that the deal was being made subject to the approval of Multnomah Plywood Corporation, Mr. and Mrs. Parker and Smith left.

Q. Can you recall any more of the terms other than there was to be a mortgage on some property and that the total consideration was \$180,000?

A. Well, it seems to me that the mortgage on the other property was to be \$60,000, which was to be the down payment on the Lost [1228] Lake property, but those are the only terms that I can recollect.

Q. Would you recall this, that there was \$42,000 due on the Bear Creek, but they were willing to let that apply on the purchase price of Lost Lake?

A. My recollection is that there was a little more than that. There was about \$43,000 due on the Bear Creek portion, but I don't recall that——

(Testimony of John Bledsoe.)

Q. And then that that was to be part of the first payment?

A. Well, this money was due to the Parkers from Multnomah Plywood Corporation.

Q. On the Bear Creek transaction?

A. On the Bear Creek, yes, and I do not recall that money due them there being applied on the Lost Creek (sic) sale.

Q. At any rate, you say there was to be a down payment of somewhere around \$60,000?

A. Well, as I recollect it, there was to be no cash transfer, but we were to clean up the Bear Creek property and to secure the payment of, upon the Lost Lake property, and there was to be an additional sixty thousand or so mortgage on some property in Southern Oregon, and the note being given on it being, in effect a down payment.

Q. Do you recall the terms for the payment of the balance beyond the sixty thousand?

A. I remember our discussing, though I can't remember the terms except that they were to be tied in some way with the logging [1229] of the timber.

Q. Now, when these three people came in to see you, did they seem to have already reached an agreement, or was it negotiated in your office?

A. I should say it was negotiated in our office.

Q. Well, did they seem to have any general——

A. They had general ideas, yes.

Q. ——of what the terms were to be?

A. Yes, what the property was worth.

Q. And in general the terms and the details were

(Testimony of John Bledsoe.)

negotiated; was that it, or would you say that more than that was negotiated?

A. I would say just the terms were negotiated. They had in mind what the respective properties were worth, and it was a matter of working out the technique of effecting this change.

Q. Now, you say that the contract that you drew up was to be subject to the approval of Multnomah Plywood? A. Yes, that was.

Q. Were you to submit the contract to both attorneys, or to one party first and then the other?

A. I was, I recollect I was to submit it to both attorneys.

Q. You were not to submit it to Parkers first and get their approval first?

A. I don't recall that.

Q. All right, then, what happened after that?

A. Well, the 24th was on Friday. On Monday I prepared papers [1230] effecting the completion, winding up of the other property transaction, and advised—transmitted them to the Parkers and sent in a letter to the Multnomah Plywood Corporation and advised them that the Lost Lake property papers would be prepared in due course when I could get to it. I spent some time in preparation of those Lost Lake papers, but I don't recall their ever being put in final form.

Mr. Johnson, the president of Multnomah Plywood Corporation, came to our office, I should say probably within a week or within two weeks after this occurrence, and, among other things, told me

(Testimony of John Bledsoe.)

that the transaction was off; that Multnomah Ply-wood was not interested in going through with it.

Q. Did he indicate whether that was final or whether there might be some further negotiations?

A. I got the impression it was definitely final.

Q. Now, I do not understand whether you have any different recollection as to whether you prepared a tentative contract or paper of some kind on the Lost Lake property.

A. I have a definite recollection that I expended effort towards that end, and my record of my time spent during that time would indicate that I spent some time working towards that. I do not recall putting the deed in final form.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: No questions, Mr. Bledsoe.

Mr. Krause: I have none. [1231]

Cross-Examination

By Mr. Buell:

Q. Mr. Bledsoe, you rather definitely fix the date of August 24th. Is that by refreshing your memory from a calendar or an appointment book?

A. Yes, in my date book I remembered a meeting, and I refreshed my memory by looking in it, and I noted that I wrote at that date that they were there about 11:30 on the morning of the 24th.

Q. When Mr. Johnson called the deal off, did he say that the property was not—or the timber was not worth what they were asking for?

A. Mr. Johnson did not say that was the reason.

(Testimony of John Bledsoe.)

I got the impression that he did not think it was, and he made the additional statement at the time that the company was not so hard up that they would have to mortgage that Southern Oregon property to put through a deal if they wanted to.

Q. Was Multnomah Plywood having some financial difficulty along about that time?

A. Not to my knowledge.

Q. Were they having any particular difficulties keeping an adequate supply of logs or obtaining logs?

A. I have no specific recollection on that. I think that—I think they were interested in getting more logs at that time.

Q. The primary purpose of the meeting was to work out the details [1232] for closing the Bear Creek transaction; was it not?

A. Well, it was to discuss both.

Q. But the Bear Creek deal was coming up, the balance was coming due to the Parkers, and some disposition had to be made of that, didn't it?

A. Yes, it was disposed at that meeting.

Q. And that Bear Creek, that timber was down near the Nestucca River, wasn't it, or would you know about that?

A. I can't say.

Q. Did Mr. Parker, while he was in your office there, say anything about Mr. Walter Stegmann being interested in this Lost Lake property?

A. No.

Q. Did you ever hear the name Walter Stegmann before this lawsuit?

A. No.

(Testimony of John Bledsoe.)

Q. Insofar as the agreement as to such, or a meeting of the minds of the parties or an agreement, is it your testimony—you said that it was definitely understood that whatever was worked out was subject to the final approval of Multnomah Plywood. Is that a fair statement?

A. I think that is correct.

Q. And was it the kind of a situation where the Multnomah wanted to have the Parkers reduce their proposal of terms on which they would sell the property to Multnomah but retain a final form, [1233] and then Multnomah would act on it and accept it or reject it as they saw fit?

A. Well, I should not say it was exactly like that. I think it was more like this. Clyde Smith, being an employee of the corporation, when a person purports to act for a corporation he has to have either corporate authority given him in advance or the action confirmed, but as far as Smith and the Parkers were concerned, agreement was reached in my office, but Smith was not authorized to complete the deal for Multnomah at that time.

Q. Mr. Bledsoe, I am handing you what has been marked for identification Exhibit 117, which is a certified copy of the minutes of the Board of Directors of Multnomah, on August 20, 1951. I wonder if you would run through that quickly and see if that refreshes your memory at all as to whether or not this mortgage on the Southern Oregon timber was to secure the Lost Lake timber if Multnomah bought

(Testimony of John Bledsoe.)

it, or whether it was to secure the balance on the Bear Creek timber?

A. No, I don't remember. In fact, I am a little surprised at this resolution being dated before the meeting.

Q. I take it, then, that is the first time you have ever seen that portion of the minutes?

A. Yes, it is.

Q. No further questions.

Redirect Examination

By Mr. Jaureguy:

Q. I think you referred to that as a resolution. I don't think [1234] there is any resolution there, is there, Mr. Bledsoe?

A. No, minutes of the meeting.

Q. Just the minutes of the meeting?

The Court: I do not think that is important.

Mr. Jaureguy: No, it isn't, and I just wanted, in case later on somebody looked at it and thought it was the wrong exhibit there.

That is all at this time.

Mr. Buell: No questions.

Mr. Jaureguy: That is all.

The Court: That is all. You are excused, Mr. Bledsoe.

(Witness excused.) [1235]

LINCOLN S. FERRIS

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Mr. Ferris, you live in Portland?

A. I live in a suburb of Portland in Multnomah County.

Q. You are a practicing attorney in this city?

A. I maintain an office in the Failing Building, and have for somewhat over five years, six years prior to that in the Corbett Building.

Q. Have you been practicing law in Oregon, how long?

A. It will have been 18 years. In May, 1935, I was admitted to the Oregon Bar.

Q. Do you know Mr. and Mrs. Chet Parker?

A. I do.

Q. You have known them how long?

A. It would be my belief that I have known the Parkers for between six and seven years.

Q. Have you ever done any professional services for them? A. I have.

Q. Do you recall on one occasion their mentioning to you some question in their own minds about a title policy? A. I do.

Q. Could you tell us about it? Could you tell us when that was? [1236]

A. I have looked up my office records in order to fix the date and supply it to you. As I recall, it was

(Testimony of Lincoln S. Ferris.)

the 29th of August, 1951. At that time the Parkers had been to see me perhaps twice a year for several years for various things, most of them of a rather minor nature, and they came in on that day for an office inquiry without any previous appointment. I have thought hard to try to think what the burden of their inquiry was. I can tell you that it was one of three things, probably. I had handled a sale of heavy equipment to some people named Alcorn down near Alsea sometime prior, and in January of 1951 I had been hospitalized, extremely ill, and during that time they had come to see me regarding the purchase of some, I believe, electric unit in Camas, Washington, and at my secretary's request they took that inquiry to Mr. Samuel H. Martin. I did not have to do with its consummation, and they also had had some small question of some sort regarding, I believe, timber in Cowlitz County, Washington, on either one of those three things, or their personal question of whether or not to set up a trust fund for their son, I believe, would have been what Mrs. Parker came to ask me about, and during this—I might say that the charge I made was for the office, cash charge, of a comparatively unimportant sort.

My belief is that that Alcorn sale did pan out and that the buyer bought, and they, of course, conveyed. They could very well have been asking about policing that contract. It was [1237] some thousands of dollars of heavy equipment.

Now, our relationship had been a very cordial one personally. They have flattered me by asking me at

(Testimony of Lincoln S. Ferris.)

one time my advice as to a tutor for their son who, I believe, was having trouble with his school work. I suggested, I remember, or meant to suggest the name of Mr. Price Burlingame. So I asked Mr. Parker, as I recall, intending to be cordial, and it was fully beside what we had been discussing what he had been doing to keep busy; because I understood he had sold his interests in Yamhill County or around McMinnville and I thought that might be an amusing observation. In the same conversation he said, "Well, I—" something like this, "Well, I have right now, would have a chance which I will lose to make a desirable sale." It was either near The Dalles or near Hood River. I don't know where it was. It was in the Cascades in the upper Columbia area. He said, "But I understand I cannot get title insurance because I have made only a small down payment." And I think he said, "I have only an option to buy." I said, simply making an observation as I suppose anyone in our work would, "That does not sound right. Have you positive information that you cannot get such insurance?" I believe he said, "No, I haven't." I said, "Well, if you wish me to I will make inquiry about it. I am frequently with Mr. Allison at the Commonwealth, and Mr. Dwyer at The Title and Trust." So I telephoned Mr. Dwyer and I have a very distinct recollection of that telephone conversation [1238] because not long before that, in a thumb-nail sketch of his life, the Daily Journal of Commerce had said that

(Testimony of Lincoln S. Ferris.)

he had just been promoted and that he had started in as an office boy, sweeping out, perhaps 40 years before that, and had worked there, I believe, his entire working career. And again, in my own intention to be genial, I called him and made some bantering observation regarding his having been successful and then I asked him "Is it true that a person who has"—well, I won't attempt to recall at this time my exact words, but I attempted to frame to him the question that Mr. Parker had put to me, or at least that I had inferred he was asking when he said he couldn't get title insurance. I would have no idea other than that Mr. Dwyer gave me to believe the contrary.

I took from the Parkers, or from Mr. Parker, I am quite sure the business they had come in on was something Mrs. Parker had asked me about. That is my recollection, but I can't remember exactly and I cannot remember how he had this impression. All I can remember is that I did call Mr. Dwyer, spoke to him personally, and incidentally, I earnestly hope I have not injured him because I like him very much.

The Court: Well, did Mr. Dwyer give you—did he tell you that they could get the title policy even though they had not paid the full purchase price?

The Witness: I have tried to remember Mr. Dwyer's answer and I believe it was "I think that that is misinformation. If [1239] you will bring me the data, I will look into that, and I assume that we could write the policy."

(Testimony of Lincoln S. Ferris.)

Now, that would be my best recollection of what Edwin Dwyer said to me on the telephone.

The Court: Any further questions?

Mr. Jaureguy: Then did you convey that information to the Parkers?

A. I did immediately, and I said, "If you have anything on this that they would need for their research on that, if you will give it to me I will get it down to them." And I find that I charged for that service an errand-boy fee of \$5.00. That is all I had to do with it.

Q. That was paid? A. Oh, at once.

Mr. Jaureguy: You may take the witness.

The Court: Mr. Ryan?

Mr. Ryan: No questions.

Mr. Krause: I have none.

Cross-Examination

By Mr. Strayer:

Q. What do you mean by "errand-boy fee"? Do you mean you were calling Mr. Dwyer, is that what you mean?

A. Yes, Mr. Strayer, I mean simply that I felt that I was not, I did not consider anything here except—I felt that I was not engaged to draft any contract or I know that I didn't dictate [1240] any letter. I did not even make a page in the ledger for the charge.

Q. I understand.

A. I felt that I was simply engaged to transmit to Title and Trust Company, I think probably Miss

(Testimony of Lincoln S. Ferris.)

Helen Hossack, I am not sure, a couple of memoranda that they left with me. I did not even look at them.

Q. Did the Parkers leave something with you which you sent over to Title and Trust Company?

A. I believe that is so, Mr. Strayer.

Q. Do you know what the papers were?

A. No, I do not.

Q. Did you take them down yourself?

A. I think I did. I am often in there.

Q. Do you remember to whom you gave them?

A. Either Edwin Dwyer or his secretary, or Miss Helen Hossack at the counter.

Q. But you have no recollection of what those papers were?

A. No, I do not. In fact, I doubt if I even inspected them, Mr. Strayer.

Q. Were both Mr. and Mrs. Parker in your office, Mr. Ferris?

A. They were.

Q. But Mr. Parker was doing most of the talking as I understand it?

A. Yes regarding this other matter which would be one of four [1241] that I mentioned. I am positive of that.

Q. Which one of them brought up this matter of the title insurance problem, do you know?

A. Mr. Strayer, I have related how I think it came up, and I repeat that I believe it was because I asked Mr. Parker if he was doing anything to keep busy, and he responded, as I recall, something like that, "Well, yes, as a matter of fact, right now

(Testimony of Lincoln S. Ferris.)

I could make a desirable deal on some timber if I could get title insurance." I think it was like that.

Q. Did he indicate to you that he was having difficulty getting title insurance?

A. I had no such impression no. As I say, I have wracked my brain to think if he said to me how the matter got—why he felt that, and I do not know.

Q. Did he tell you that he had an option on the timber?

A. I am almost positive, I can remember he said, "I have made a very small down payment and have an option to buy."

Q. Did he show you the option, as you recall?

A. If he showed it to me, I did not look at it.

Q. Well, that would not have been one of the papers you sent down to the title company, then?

A. The only receipt I gave them I brought to court, and it must have been——

Mr. Jaureguy: Oh, yes; here it is. I didn't even look at it. [1242]

Mr. Strayer: May I look at it?

Mr. Jaureguy: Yes.

The Witness: Mr. Strayer, I do not even know what this lawsuit is about. I have never been consulted about it.

The Court: You are not being criticized at all, Mr. Ferris, and you are not a litigant here. You are just a witness, and nobody is criticizing you.

The Witness: Thank you, your Honor.

Mr. Jaureguy: I would like to have permission

(Testimony of Lincoln S. Ferris.)

to put a document in for which I do not have a pre-trial number.

The Court: That is all right.

Mr. Jaureguy: I think it would be about 119.

(Receipt dated August 29, 1951, to Chester L. Parker from Boyd, Ferris and Erwin, marked Defendant Parker's Exhibit 119 for identification.)

Mr. Jaureguy: That purports to be a receipt dated the 29th of August, 1951, signed by Boyd, Ferris & Erwin by L. F., "Option, Paul and Ethel Winans, HR, Title and Trust Co. receipt, HR Title and Trust Co. report, order number HR 12987."

The Court: Any objection?

Mr. Krause: No.

Mr. Ryan: No.

Mr. Strayer: No.

The Court: It may be admitted.

(Receipt previously marked Defendants Parkers [1243] Exhibit 119 for identification was received in evidence.)

Mr. Strayer: Do I understand, Mr. Ferris, that this was a receipt issued by you to the Parkers at the time they left the papers with you?

A. The Parkers, oh, yes, that is in my own handwriting. Although I have not looked at it, I asked my secretary to look it up and she handed it to me when I came to court this morning.

Q. (By Mr. Strayer): How was the receipt in your files? I don't understand.

(Testimony of Lincoln S. Ferris.)

A. How was the receipt in my files? Because after I got through with the transaction, I wanted to be sure that I was not charged with any papers that I no longer had.

Q. In other words, you returned the papers to the Parkers and they returned your receipt; is that the idea?

A. Very likely so, Mr. Strayer. I cannot be positive. That would be my ordinary practice.

Q. All right. Now, the receipt indicates that the papers which you had were, among other things, the option, and, I believe that title report, were they?

A. A receipt from the title company for the report charge.

Q. My question is, did you note that the option did not run to Mr. Parker but it ran to Mr. Walter Stegmann?

A. I did not, no, sir.

Q. Did the report—— [1244]

A. Mr. Strayer, you will verify the observation that if I had done any study on this case I would have regarded myself as a lawyer in the matter and have made a charge accordingly. I did not examine the papers.

Q. I am just trying to find out what information you did have.

A. I categorically say I did not examine the papers or study any drawn up connected with them.

Q. So I take it, then, the name of Mr. Stegmann was not mentioned?

A. Now, just a minute, Mr. Strayer, please. I

(Testimony of Lincoln S. Ferris.)

don't remember that it was. I had heard the name of Mr. Stegmann before in connection with a case in Frank Day's District Court in a suit where Mr. Parker was a witness for me, and on that occasion there was mention that I might be able to get some expert, and the amount involved was too small to bother with, but somewhere, either in that case where he was my witness, or somewhere else. I remember this morning hearing the name. I believe somebody was asked if he had ever heard the name. I would have to say yes, I had heard the name, so I would have to answer your question, Mr. Strayer, I don't know whether it was mentioned or not.

Q. Mr. Ferris, did the parkers make any mention to you of a defect in the title?

A. No, sir.

Q. Did they make any mention to you of the fact that it was school lands? [1245]

A. That it was what, Mr. Strayer?

Q. School lands, or that it had been sold——

A. Not that I recall. I doubt it very much.

Q. In other words, then, you did not get the impression from them that they were concerned at all about the title of the property? They were merely concerned about the mechanical problem of getting the title insurance?

A. Yes, that would be a fair assertion. That was certainly the burden of my understanding.

Q. You merely called Mr. Dwyer to find out whether title insurance could be purchased by them

(Testimony of Lincoln S. Ferris.)

in advance of actually getting the deed to the property? A. That would be correct.

Q. And he suggested that you send the papers down to him, and he would look it over, but no doubt it could be taken care of?

A. That is my best recollection, Mr. Strayer, yes.

Mr. Strayer: I think that is all.

Mr. Jaureguy: That is all.

Q. (By Mr. Strayer): How do you happen to recall, Mr. Ferris, that you suggested to Mr. Parker that he also take in an assignment of the option? To refresh your memory now, the option ran to a man by the name of Walter Stegmann, and there was an assignment of that option from Stegmann to Parker. Apparently the assignment was not given to you, but do you recall suggesting to Mr. Parker that an assignment should also be taken in to the [1246] title company?

A. In honesty, I would have to say I don't remember.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: Nothing.

The Court: That is all. Thank you, Mr. Ferris. You are excused from further attendance at the trial.

(Witness excused.)

The Court: Recess until two o'clock.

(Noon recess taken.) [1247]

Mr. Strayer: The next I have is Exhibits 21, 22, 23 and 24 which are the depositions of Mr. and Mrs. Parker, Walter Stegmann, and Mr. Paul Winans which are offered by the plaintiff as admissions against interest—25 instead of 24.

The Court: Are there any objections?

Mr. Jaureguy: We object to the introduction of Winans' and Stegmann's depositions on the ground that they are present in court and are willing, able, and desirous, I think, to testify.

The Court: Well, they already have testified.

Mr. Jaureguy: Yes, well, they already have testified.

Mr. Krause: Well, in any event, your Honor, we object to the introduction of these depositions excepting certain portions as where called to the attention of the parties during the trial. [1252]

The Court: I think I have already indicated that I was under the impression that was the rule, but I have subsequently come to the conclusion that the deposition of a party is admissible for any purpose. sition of Parker against Parker and the deposition of a party is admissible against the party but not against other parties.

Mr. Strayer: That is correct.

The Court: Yes, but they have offered the deposition of Parker against Parker and the deposition of Stegmann against Stegmann, and the same thing is true with the Winans deposition.

Mr. Jaureguy: My objection was just a little super-cautious, then, because I wanted to be sure it was not going to be considered anyhow, I mean,

the other two depositions would not be considered against Parker.

The Court: That is right.

Mr. Buell: That is the intent of our offer.

The Court: There is no question about that, Mr. Jaureguy. It is not to be used as substantive evidence against other parties, only used for the purpose of impeachment.

Mr. Jaureguy: Then I renew my objection because you cannot impeach a party—I don't know whether I should be talking about their inability to impeach these two people, anyway, and maybe I should sit down.

Mr. Strayer: If I may interrupt here, they are not offered for impeachment; they are offered as admissions against interest [1253] of a party. [1254]

* * *

Mr. Strayer: We offer Exhibit 30, which is the contract between Mr. Stegmann and Mr. Walker.

Mr. Jaureguy: Is that the same transaction?

Mr. Strayer: No, that is another one on Hood River. Stegmann-Walker transaction. That had nothing to do with the checking arrangement. That is where he took a contract from Walker and sold the timber to the Walton Lumber Company.

Mr. Jaureguy: I object to that on the basis as far as the Parkers are concerned it is purely hearsay, not in any way binding upon them.

Mr. Ryan: I object to it as far as the defendant Stegmann is concerned. It is irrelevant to the issues of this case.

The Court: I wonder if you would remind me about that transaction?

Mr. Strayer: That transaction, your Honor, of course, as you understand, we are trying to get as many of these transactions as we could find where Stegmann and Parker had been involved in some manner or other, and the testimony on the Walker timber and decided he did not want it, and Mr. Stegmann then sold it to the Walton Lumber Company, and the testimony was that he was to pay Mr. Walker for the payment he had not paid until he said he thought his wife had recently paid Mr. Walker. It is [1257] just a part of the picture of timber transactions where both Stegmann and Parker appeared on one capacity or another.

The Court: It looks remote to me under any circumstances, and I do not understand how you can draw any inferences favorable to the plaintiff from that transaction. Any inferences that might be drawn, it would seem to me, should be made in favor of the Parkers on that one.

Mr. Strayer: I will agree, your Honor, that it is not as strong as some of the others, but it does have this significance. Mr. Stegmann got up to Hood River early in the spring of 1951, we believe, as a sort of a scout looking for timber for Mr. Parker. Now, he gets a contract on Mr. Walker's timber which requires no outlay of money. Mr. Parker looks the timber over, decides he does not want it, and so it is disposed of elsewhere, just merely a little link in this series of timber contractions.

The Court: I do not think it is worth very much, but I am going to admit it for what it may be worth.

(Exhibit 30 received.)

Mr. Strayer: I now offer Exhibit 31, which has been identified by Mr. Stegmann as a contract between himself and the Arthurs. This was related to the Gopher Valley transaction.

Mr. Jaureguy: Object to that in behalf of the Parkers. We object to it on the ground that it is incompetent, irrelevant and immaterial and also that it is purely hearsay.

The Court: I thought this was the contract between Parkers and Stegmann? [1258]

Mr. Jaureguy: No.

Mr. Buell: That contract was assigned by Stegmann to Parker, according to one of the exhibits.

Mr. Strayer: The Gopher Valley transaction started out with this contract between Stegmann and the Arthurs. Then there has been a lot of testimony here about how Parker became involved in this particular contract. First out he took a first mortgage on the interest that Mr. Stegmann had in the timber. Then they made a contract with Mr. Rutherford whereby he was to log the timber.

The Court: Is this the timber that burned?

Mr. Strayer: This is the timber that burned, yes.

The Court: Objection overruled. It may be admitted.

(Document, logging agreement, previously marked Plaintiff's Exhibit 31 for identification, was received in evidence.)

Mr. Strayer: Next is Exhibit 47, which consists of checks of Chet and Lois Parker on the First National Bank of McMinnville. I believe Mr. Jaureguy has those checks, and also the deposit slips they were able to find, which, I believe, should be marked as 47-A. Your Honor will recall that we asked permission to have a ledger made up of those checks. We have a ledger of the checks and the deposit slips as a part of that exhibit.

Mr. Jaureguy: You mean the checks are all marked 47?

Mr. Strayer: That was my understanding of it. At least, [1259] that was what was reserved for them.

Mr. Jaureguy: We object to that big bundle of checks going in on the ground that no more than two or three of them at the very most could have any possible relevancy to this case. There is just a whole bundle of two or three hundred checks.

The Court: Why do you want all of the checks admitted?

Mr. Strayer: Well, we think, for one thing, your Honor, that the matter of serial numbers on the checks is of some significance in view of the disputed items here, the \$25,000 check and the three hundred ninety or eighty-two odd dollar check that was given by Parker to Mr. Stegmann. They have certain serial numbers on them. Now, by making a chronological ledger and by trying to fit those checks into that chronological ledger, it is disclosed that the \$25,000 check which purportedly was written in August according to the serial number should have

been written the preceding May or June, and the \$382 dollar check which purportedly was written during the month of August, according to the serial number would not have been written until December, 1951. Now, we cannot give the picture without having these checks and the serial numbers on them.

The Court: When was the check cashed, the \$382 check?

Mr. Strayer: In December.

The Court: In December?

Mr. Strayer: The \$382 check actually was cashed in December. [1260]

Mr. Buell: December 31st.

The Court: Objection overruled. It may be admitted.

(Bundle of checks previously marked Plaintiff's Exhibit 47 for identification was received in evidence.)

Mr. Buell: I might clarify the record. The reporter has also marked as A, B and D, that is, as A, the ledger of the serially numbered checks; Number 47-B, the ledger of the counter checks; and 47-D, the list of deposit slips for the years 1949 and 1950, and Mr. Jaureguy has delivered to us this morning some additional checks, about 20 or 30, I would say, which we are having a list prepared of at the same time.

The Court: Have you furnished Mr. Jaureguy with a list, copies of the ledger sheets?

Mr. Buell: We already have.

Mr. Jaureguy: In addition to those, I have shown you three others, I think, that I didn't give you. I

have shown them to you, eight dollars, one twelve-dollar check, and another one.

Mr. Strayer: Oh, yes, you told me.

Mr. Jaureguy: The same objection I make to these on the basis of the same objection I made to the preceding Exhibit, which was the check themselves.

The Court: Objection overruled. Admitted.

(Ledger sheets previously marked Plaintiff's Exhibits 47-A, B and D were received in evidence.) [1261]

Mr. Strayer: In connection with this list of checks, your Honor, we just received from Mr. Jaureguy last night an additional package of checks which we had not before, and we would like to add them to the ledger.

The Court: All right, do that later.

Mr. Strayer: I have overlooked the fact that 44, 45 and 46 apparently have not been admitted. Those are copies of income tax returns of Walter F. Stegmann for the years 1949, 1950 and 1951. We offer them.

Mr. Jaureguy: We object to that on the grounds that they have no possible bearing on the Parkers nor in any way could be binding upon them nor affect their liability in this case anyhow.

The Court: They may be admitted.

(Photostatic copies of individual income tax returns for Walter and Edna Stegmann for the years 1949, 1950 and 1951, previously marked

Plaintiff's Exhibits 44, 45 and 46 were received in evidence.)

Mr. Strayer: Now we offer Exhibit 48, which is a certified transcript of various mortgages and other encumbrances appearing against Walter Stegmann in Yamhill County, I believe.

Mr. Buell: All of those documents were unsatisfied of record as of the time of this transaction.

Mr. Jaureguy: Object to that on the ground that it is incompetent, irrelevant and immaterial. [1262]

Mr. Ryan: I object to it on the same basis and on the further basis they are not conclusive on the part of the defendant Stegmann with regard to indebtedness.

The Court: I did not hear you.

Mr. Ryan: On the additional basis, not only that they are incompetent, irrelevant and immaterial, but that they are not conclusive upon the defendant Stegmann with respect to what they intend to prove.

The Court: They do not have to be conclusive in order to be admitted, do they, Mr. Ryan?

Mr. Ryan: Not necessarily, no, your Honor, but I wanted to add that, and that they would be improper.

The Court: You objected and you moved for a withdrawal of the other count there on the grounds that plaintiff has failed to show that Stegmann was insolvent.

Now, it seems to me that if there is a long record of unsatisfied judgments in the county in which he lives, it is pretty good evidence that the man was

insolvent, at least at that time, at the time the judgments were entered. That merely confirms the statement of Mr. Ellis at the garage that the credit agencies and collecting agencies and the lawyers would not take the account because they said it was uncollectible. I think it is relevant and I think it is admissible.

Mr. Ryan: Of course, he had these in his possession and didn't question the defendant Stegman on them. [1263]

The Court: It may be admitted.

(Certified transcript of Yamhill County previously marked Plaintiff's Exhibit 48 for identification was received in evidence.) [1264]

* * *

Mr. Strayer: I am offering Exhibits 83, 84 and 85, which are the \$500 check and the two options referred to in the testimony of Mr. Davis.

The Court: I will take that one under advisement.

Mr. Jaureguy: While you are taking that under advisement, I wish you would consider this objection, and that is that we object to it on the grounds that under the rules of evidence neither the character or the credibility of a witness or a party may be proved by any particular wrongful actions, and they are claiming that this a particular wrongful act, and therefore it can have no bearing, to repeat the term, *res inter alio acta*. That expresses what I have in my mind which I have rather quickly explained.

Mr. Strayer: I am glad you explained to me what that term was.

The Court: I do not think that that is applicable to a fraud case. I was under the impression that similar transactions close in time are admissible in order to show intent. [1268]

* * *

Mr. Strayer: Now, the only other matter we have is the deposition of Mr. Rutherford which was taken during the recess of this trial and we want to offer the Rutherford deposition as an Exhibit.

Mr. Jaureguy: Notwithstanding the fact that that is a little closer than the Davis, Smith matter, we object to that on the ground that it is entirely a different transaction and has no bearing on the merits of this case.

The Court: I will take that one under advisement for the reason I have not seen his [1270] testimony.

* * *

CARL STEGMANN

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Where do you live, Mr. Stegmann?

A. Willamina.

Q. How long have you lived in Oregon?

(Testimony of Carl Stegmann.)

A. All my life.

Q. And are you related to Walter Stegmann?

A. I am his brother.

Q. You are his brother? A. That's right.

Q. Are you acquainted with Chet Parker?

A. Yes.

Q. How long have you known Chet Parker?

A. Oh, a couple of years, I suppose.

Q. Have you ever met Mr. Paul Winans?

A. I seen him one time, yes.

Q. At one time? A. Yes.

Q. When was that?

A. Well, that was in August last year, it was.

Q. August, 1952?

A. I believe it was, or '51. I am not sure. [1278]

Q. '51? A. '51.

Q. Do you remember the day in August that it was?

A. Well, not exactly. It was about the middle of August.

Q. Would you say it might have been August 18th? There has been testimony here that it was.

A. It probably could have been, yes.

Q. Where was it that you saw him?

A. Well, it was at his place the first time I seen him.

Q. Who else were there?

A. Well, I was with my brother.

Q. Did you go any place that day with Mr. Winans?

(Testimony of Carl Stegmann.)

A. Well, we went up to, first up there at Lost Lake.

Q. Did anybody go with you?

A. Well, I was with my brother and Mr. Winans.

Q. Was there anybody else went up?

A. No, not we——

Q. Well, I want to ask whether there weren't two men from Portland, surveyors, went up?

A. Well, they was in a different car.

Q. They were in a different car? A. Yes.

Q. But you and Mr. Winans and your brother, then, went up in his car, and then somebody went up in another car? A. That is right. [1279]

Q. How many were there in the other car?

A. Two.

Q. Were they surveyors?

A. They seemed to be. That is what they was up there for.

Q. Did they do surveying work up there at Lost Lake?

A. Well, yes, they were running lines around a piece of property up there.

Q. Then when you got through, did the five of you go back to the Winans place?

A. Yes, that is right.

Q. At any time did you see Chet Parker?

A. Yes, he was up there.

Q. Just tell us when and where you saw him?

A. Well, these surveyors was—there was kind of an office up there, and these surveyors had their car parked outside, and I was out there talking with

(Testimony of Carl Stegmann.)

them, and Mr. Parker pulled up on the other side of the road and got out of his car, walked across the road, and talked to me because I had seen him before, knowed him slightly before that. I knew who he was, and he went on in to the office, and shortly afterward, well, him and my brother and Mr. Winans were inside, and then they came back out, and I don't know what they were talking about, but that is about all.

Q. When Chet Parker went in the office, were the two surveyors still there, or had they gone, if you remember?

A. They left about that time. [1280]

Q. They left about that time?

A. It has been quite a while ago. I just don't quite remember. They left about that time.

Q. You say you do not know what Chet Parker, Mr. Winans and your brother were talking about when they were inside?

A. No, I do not. I never paid any attention to their business. I didn't have any interest in it, and I never paid any attention to what they were talking about.

Mr. Jauregui: You may take the witness.

Mr. Ryan: We have no questions.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. What is your occupation, Mr. Stegmann?

A. I work with my dad down at his farm.

Q. Where is the farm?

(Testimony of Carl Stegmann.)

A. Down at Willamina.

Q. Has your brother been in the stock-raising business?

A. Well, he worked there with my dad several years ago. That is, oh, that was before the war.

Q. Your dad had some cattle on his place?

A. Oh, yes, that is right.

Q. What I was wondering about was whether your brother had operated any ranches with white-faced cattle?

A. I was in the army during the last war, and my brother was [1281] staying there on the place then.

Q. He was taking care of your father's place?

A. Well, yes, he was helping my dad then on the place at that time.

Q. My question was whether he had operated any ranches of his own? A. No.

Q. Has he raised white-faced cattle?

A. No.

Q. Both of you went up there to Hood River, that is, in 1951, and since that time you have worked on the farm out there at home?

A. I have, yes.

Q. Do you do any logging, too?

A. Well, last summer I did a little logging, yes. I had a small Cat, and I logged there on my dad's ranch.

Q. On your dad's place, were you?

A. Yes.

(Testimony of Carl Stegmann.)

Q. You have not hired out for other loggers, have you? A. No.

Q. What were the circumstances of your getting acquainted with Chet Parker in the first place?

A. Well, my brother lived in McMinnville, and I was down to see him several times, and Mr. Parker had an occasion to be there, and I was introduced to him. [1282]

Q. You never worked for him? A. No.

Q. Now, what was the occasion of your going up to Hood River on, during about the middle of August, 1951?

A. Well, it was during the hot part of the summer, and I didn't have too much to do around the place there at that time, and my brother come down and asked me whether I wanted to go along for a ride or not. I was rather interested in going up there to see that part of the country, and I just had a chance to go along so I just took him up on it.

Q. Where was Walt living at that time?

A. He was living at The Dalles.

Q. He came down to McMinnville to pick you up and then take you back?

A. Well, his relations lives down there, too.

Q. He had some relations around McMinnville?

A. Oh, yes, our folks both live there.

Q. When he came down there to pick you up was his wife along?

A. By golly, I don't remember.

Q. When you drove back up to Hood River, who was in the car besides yourself and Walt?

(Testimony of Carl Stegmann.)

A. There was nobody with us besides me and Walt.

Q. Nobody drove back up? A. No.

Q. You don't know whether Walt brought his wife down to [1283] McMinnville?

A. No, I don't know that.

Q. Did you see Mrs. Walt Stegmann at any time during that day that you were up there at Hood River? A. No.

Q. You did not see her? A. No.

Q. You don't know where she was at that time?

A. At that time, no, I do not.

Q. On what day did you go up there? Was it the same day that you went up on to the Lost Lake property? A. Yes, it was the same day.

Q. You had to leave from McMinnville kind of early then?

A. Let's see, wait a minute, let me think. Yes, it was late that night. We drove during the night.

Q. Then you started up the day before you went up to Lost Lake?

A. Yes, that is right. We went on the road that night.

Q. Where did you stop over night?

A. Well, he had this place rented at The Dalles, and we stayed up there the night, then drove back to Hood River the next morning.

Q. The night before you drove to The Dalles?

A. That is right.

Q. Was Mrs. Stegmann up there?

A. No, she wasn't. [1284]

(Testimony of Carl Stegmann.)

Q. No one there at the house except you and Walt?
A. That is right.

Q. What was it, a house or an apartment?

A. Well, it is kind of a, I don't know what you would call it. Duplex, I suppose, is what you would call it.

Q. A two-apartment place?

A. That is right.

Q. Where was it located, Mr. Stegmann, in The Dalles?

A. Golly, you got me there what street it is on. I could find it again if I went up there, but I couldn't tell you what street it was on.

Q. Was it in The Dalles proper?

A. I believe it would be, yes.

Q. Inside the city limits?

A. I believe it would be.

Q. What sort of car was Walt driving at that time?
A. He had a Buick convertible.

Q. That is the one you used to drive up there?

A. That is right.

Q. Did he have another car besides the Buick convertible?

A. I believe he had, but I don't remember what kind of a car it was now. I ain't sure. He has had several different cars, and I just don't remember. I remember we used the Buick convertible on that trip.

Q. Well, you got up to The Dalles the night before, and about [1285] when did you leave the place to go to Hood River?

(Testimony of Carl Stegmann.)

A. We left there fairly early in the morning because, well, it must have been, I would say, about nine o'clock when we got up to the Winans place.

Q. Where was the Winans' place?

A. Well, it is, well, I just don't remember the name of that little town that is up there, but you go out of Hood River and go toward Mt. Hood. Now, I don't remember just what the name of that little town is that you go through out there.

Q. Was Winans living in that sort of a little town?

A. No, it is out in the country.

Q. Out in the country?

A. Yes.

Q. Then whose car did you drive up to Lost Lake in?

A. Well, Walt's Buick.

Q. And Winans joined you in that Buick?

A. Yes, that is right.

Q. Any of Mr. Winans' children go along?

A. No.

Q. Were you driving the car, or was Walt?

A. No, Walt was driving the car.

Q. You got up to Lost Lake about what time?

A. Oh, boy, well, it must have been about an hour after we got to Winans, and it must have been about ten, I suppose. I never paid any attention, but I imagine it was about ten, approximately. [1286]

Q. All right, then, what did you do?

A. Well, we went down there and these—as I said before, these surveyors was up there with us.

Q. Do you know what their names were?

A. No, I don't remember.

(Testimony of Carl Stegmann.)

Q. Two of them? A. Yes, that is right.

Q. And you worked around on the place all day?

A. Yes, we did.

Q. Did you take a lunch up with you, or something to eat?

A. Well, we bought some lunch there at a little store that is there at the lake lodge.

Q. About what time did you leave?

A. Oh, I imagine about 4:30 to 5:00.

Q. Was it begining to get dark at that time?

A. No, no. I imagine these surveyors, they had to come back to Portland, I suppose. That is where they said they was from.

Q. While you were up there on the place, did you overhear any conversation regarding the ownership of this land that you were on?

A. No, not that I remember.

Q. You did not hear any discussion at all as to who owned it?

A. No, I just took it that Mr. Winans owned it. He took us up there to show it to us, that is, to my brother, you might say. I really was not interested in it. [1287]

Q. Had your brother been shown the land prior to that day that you were up there?

A. I don't know that.

Q. You do not know whether he had been up there before? A. No, I don't know that.

Q. Was it after you had been up there with him that he made this deal to buy the property?

A. That I don't know either.

(Testimony of Carl Stegmann.)

Q. You don't know when he did?

A. No, that I couldn't say.

Q. You were not present at any time when there were any discussions about the purchase of the property?

A. No, I never heard any business matters brought up at all on it, actually.

Q. Now, you got down to Mr. Winans' home about what time?

A. Oh, I would say it was probably five to five-thirty. I don't really remember. I don't believe I checked on the time too close there. I know it was getting towards evening.

Q. What did you do there?

A. Well, the only thing I did, I was talking to those surveyors most of the time. They made out their field notes and I was out there talking to them most of the time.

Q. While you remained there, you did not see the surveyors go into this service station building with Mr. Winans?

A. Not that I remember, no. [1288]

Q. Well, in fact, all the time that you were there you were talking to them; were you not?

A. Most of the time, yes. Well, we was wandering around there.

The Court: When you are saying "there," do you mean out in the field or back at Mr. Winans'?

Mr. Krause: Well, no, they had gotten down to Mr. Winans' place.

Q. While you were there at Mr. Winans' place,

(Testimony of Carl Stegmann.)

you were either wandering around, you say, or standing there talking to the surveyors?

A. That is right.

Q. Were the surveyors still there when you left the place?

A. No, I believe they had left before we did.

Q. You believe they had gone?

A. I believe they had gone.

Q. When did you leave?

A. Well, shortly after Mr. Parker got there.

Q. You did not leave by yourself? A. No.

Q. Shortly after Mr. Parker got there you and your brother left? A. That is right.

Q. Where did you go from there?

A. Well, we went to Hood River and had us something to eat, and we started to go back to McMinnville. [1289]

Q. To McMinnville? A. That is right.

Q. You drove back to McMinnville that Saturday night, too? A. That is right.

Q. When you left up there at the Winans place, Chet Parker was still there, was he?

A. Well, now, I don't really remember whether he was still there or not. It seems to me like somebody drove up on the road. Now, there were several cars parked there and I don't know whether he left right then or whether he was still there. I believe he was still there. I rightly wouldn't swear to that.

Q. This one day is the only day that you were ever up there in that Hood River area; is that right?

A. That is right.

(Testimony of Carl Stegmann.)

Q. Just that one time? A. Yes.

Mr. Krause: I think that is all.

Cross-Examination

By Mr. Strayer:

Q. Mr. Stegmann, where is your home?

A. Willamina.

Q. How far is that from McMinnvillle?

A. Oh, I'd say about 20 to 21 miles, something like that.

Q. Are you the brother of Walter Stegmann who took over his logging equipment? [1290]

A. That is right, I did have some of his logging equipment for a while.

Q. You have all of it now, don't you?

A. That is right.

Q. Then you are engaging in the logging business?

A. I am now, yes. I am using some of his equipment now.

Q. Have you ever had any business transactions with Mr. or Mrs. Parker?

A. No, not any business transactions, no.

Q. How did it happen you went over to your brother's house on August 17th?

A. Oh, that I really don't know. I was—I went to his house quite occasionally. Being his brother, I just—any time I would be in town I would go over there to see him if he was home.

(Testimony of Carl Stegmann.)

Q. What time did you go over there on the 17th?

A. By golly, you got me there. I think I was in McMinnville that day, and I had went over. I think it was in the afternoon sometime.

Q. Now, what did your brother tell you that he was going to do?

A. Well, about the only thing he told me, he was going up there to look at some timber up there, or some land, and he asked me whether I had ever been up in that country, and I told him no. And he says if I wanted to ride along, he says, I could go along with him. [1291]

Q. Did he tell you he had a contract on the timber?

A. Well, I really don't remember now whether he did or not.

Q. Did he tell you that Mr. Parker was interested in the timber?

A. That I don't remember either. That has been so long ago I just—I couldn't recall all of the conversation.

Q. Well, now, you drove up, then, in the afternoon of August 17th; is that right?

A. Well, yes, it was late in the evening that we left McMinnville.

Q. Did you by any chance see Mr. Parker that day?

(Testimony of Carl Stegmann.)

A. No, I didn't see him until that other—until the next evening.

Q. You didn't see either Mr. or Mrs. Parker?

A. No, I didn't see either one.

Q. You did not by any chance drive through Vancouver and talk with the Parkers before you went up there?

A. No, never went through Vancouver that I remember.

Q. You drove over to The Dalles. Then you doubled back the next morning and went up to Lost Lake?

A. That is right.

Q. Your sole interest was just going along for a ride?

A. That is about the only thing I had to do with it.

Q. Was there any discussions that you remember that day at all about either your brother's interest or Mr. Parker's interest [1292] in the property?

A. How was that again?

Q. Do you remember any discussion that day at all about either your brother's interest in the timber land or Mr. or Mrs. Parker's interest in it?

A. Well, I don't remember anybody saying about Mr. Parker's interest in it. The only thing I know, he was up there. I figure he must have had because when he came up there that evening—

Q. Why did you figure he must have an interest?

A. Well, the man walked up there—well, as he walked over to the office and started talking, why, I

(Testimony of Carl Stegmann.)

mean, it looked like he was expected or something like that, and I presume——

Q. Well, didn't you know, as a matter of fact, that Mr. Parker had been staking Mr. Stegmann in timber deals before this one?

A. Well, I had heard that he had bought some timber from him now.

Q. Well, had you not also heard that he was financing your brother in timber transactions?

A. Well, I imagine it amounts to the same thing.

Q. That was rather common talk, wasn't it, around McMinnville? A. Yes——

Mr. Jaureguy: Object to that. You cannot prove agency by common reputation.

Mr. Strayer: Well, I don't think it is particularly important. Let it go. [1293]

Q. Well, now, up there on the 17th or on the 18th, did you talk to Mr. Parker at all?

A. No, I really didn't talk to him. I spoke to him. I didn't talk to him.

Q. Did he talk with these two surveyors?

A. That I couldn't say.

Q. Did he say "hello" to them, and then did they say "hello" to him?

A. That I couldn't say either. There's a kind of a park like there, and I had been looking around that, too, and I was not right with them all the time either.

Q. Were you with them when Mr. Parker drove up? A. Yes, I was standing right by the car.

Q. Were you talking to them at the time?

(Testimony of Carl Stegmann.)

A. I was talking to the surveyors at the time.

Q. How close to the car did Mr. Parker come?

A. Oh, I would say 20, 30 feet.

Q. He walked on into the service station?

A. That is right.

Q. Did you watch to see what they seemed to be doing in the service station? A. No, I did not.

Q. I take it your brother Walter was in there at the time? A. Yes, he was.

Q. Then later he came out before Mr. Parker, didn't he? [1294]

A. Well, let's see, I believe they all come out about the same time. That I don't really know.

Q. Which one of you drove away first? Was Mr. Parkers' car still there when you and brother left?

A. Yes, it was, I believe.

Q. Were the surveyors still there when you left?

A. No, they had left before we did.

Q. Oh, the surveyors left before you and Walter Stegmann?

A. That is right. I believe they did.

Q. You were with your brother constantly, then, from the afternoon of August 17th until at least the night of August 18th? A. Yes.

Q. You were with him all the time?

A. Yes.

Q. During that time did he make any telephone calls to Mr. Parker or receive any?

A. Not that I know of.

Q. Did Mr. Stegmann mention that he had talked

(Testimony of Carl Stegmann.)

with Mr. Parker about meeting him up there on the property?

A. No, I really don't recall that he did.

Q. Did Walter by any chance tell you whether he had seen Mr. Parker and had told Mr. Parker that he wanted him to go up with him on the 18th to pay Mr. Winans the \$4,000?

A. No, well, let's see—he didn't discuss any business with me because I was not interested in the business part of it. [1295]

Mr. Strayer: I think that is all.

Mr. Jaureguy: That is all.

Examination by the Court

Q. Is Walter Stegmann your older brother?

A. That is right.

Q. How old are you? A. Thirty-one.

Q. Are you married? A. No, sir.

Q. Have you lived at the home place for a number of years? A. That is right, sir.

Q. Where is your home place?

A. It is four miles northwest of Willamina.

Q. Do your mother and father live there, also?

A. Yes, sir.

Q. Who owns that place?

A. My father does.

Q. Doesn't your brother have an interest in that place? A. No, not that I know of.

Q. Didn't he buy some cars that was put in the farm of your father, a truck?

(Testimony of Carl Stegmann.)

A. I don't remember now.

Q. You do not remember?

A. That he did or not.

Q. Well, your brother has done a lot of work around the house, [1296] hasn't he?

A. Well, he was there during the war when I was in the army.

Q. I mean 1949, '50 and '51, didn't he do a lot of work around that house?

A. Oh, not too awfully much. He was there a lot.

Q. How about that gravel that he put on the ground?

A. Well, he did haul some rock in there; that is right.

Q. Wasn't that worth about seven or eight thousand dollars, or was it \$11,000 it was worth?

A. By golly, I don't know.

Q. How much gravel did he put on?

A. They hauled quite a lot of rock in there, all right.

Q. What was the name of that man who put the rock on?

A. By golly, I don't remember what his name was.

Q. Didn't you work out there when they were putting the rock on?

A. No, I was not home right at that particular time. I was helping a neighbor doing some harvesting right at that time.

Q. Didn't you come home at night?

(Testimony of Carl Stegmann.)

A. Oh, yes, in the evening.

Q. You saw the work that was being done?

A. Oh, yes.

Q. How many men did they have putting on that rock? A. They put it in a dump truck.

Q. Pardon?

A. They had a dump truck to haul it in. [1297]

Q. How many men were doing it?

A. Golly, I don't know.

Q. How long a period did they work at the house?

A. Oh, I guess two or three weeks.

Q. But you were never there when they did the work?

A. That was just during the period I was gone during the days.

Q. And every time that you came home they had—when you left they had not arrived, and when you came home they had already gone?

A. Generally gone, yes.

Q. About how many feet of rock did they put on? How long is this pathway?

A. Well, I would say, oh, I don't know, it would cover quite an area there.

Q. You never paid for any part of it, did you?

A. No.

Q. Walter Stegmann paid for it all?

A. That is right.

The Court: That is all.

Mr. Strayer: May I ask a couple of questions along that line?

(Testimony of Carl Stegmann.)

Cross-Examination

(Continued)

By Mr. Strayer:

Q. Can you tell me, Mr. Stegmann, what was the purpose of putting the rock on the home [1298] place?

A. Well, it got pretty muddy there in the winter time.

Q. I know, but were you building a road, or was it some other kind of area?

A. Well, most of it was right around the place there, building a lane, I suppose.

Q. Was it all in roads, in the form of roads?

A. Yes, more or less, yes.

Q. Do you know a man by the name of John D. Bailey? Ever hear that name before?

A. Not that I remember of.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: That is all.

Cross-Examination

By Mr. Ryan:

Q. Isn't it true that there are 80 acres that have been added to the home place there that were logged just north of it? A. That is right.

Q. Who was in on that logging operation?

A. Well, dad sold the timber off of that to another fellow.

(Testimony of Carl Stegmann.)

Q. Did your brother do any of that logging?

A. No, not last year.

Q. Not last year. Was there any logging—was there—on that 80 acres was it required that any fire trails be built, roads be built, that you know [1299] of?

A. Not that I know of.

Q. Do you recall any logging operations in 1948 or 1949 on the Pea Vine that your brother was involved in?

A. Yes, he was logging up there.

Q. Those 80 acres on the—that had been added to the home place, is that now part of your family holding there?

A. Yes, it is.

Q. I see, and did Walter have something to do with trading for those 80 acres?

A. Yes, he traded another fellow some of the timber that was on another part of the property for that piece of land.

Q. For that 80 acres?

A. Yes.

Q. Did Walt do that?

A. Yes, he did. He transacted that.

The Court: I do not understand that. In whose name is this 80-acre tract?

The Witness: It is in my dad's name.

The Court: Does your father own it?

The Witness: Yes.

The Court: Who got the money for the timber?

The Witness: I think my dad did.

The Court: Were your father and your brother in partners in the logging operation, in logging that tract?

(Testimony of Carl Stegmann.)

The Witness: No. [1300]

The Court: You were not in partnership?

The Witness: No.

The Court: That is all.

Mr. Ryan: No more questions.

Cross-Examination

(Continued)

By Mr. Strayer:

Q. I'm sorry, but I still do not understand that 80 acres.

Mr. Jaureguy: I haven't the slightest conception of what it is about.

Q. (By Mr. Strayer): Do I understand, Mr. Stegmann, that Walter had an 80-acre tract that he acquired by trading the timber on your father's farm?

A. Yes, then he had to pay my father for the timber.

Q. In other words, then, Walter bought the timber on your father's farm, and your father used the money to buy the 80 acres adjoining; is that right? A. I think so, yes.

Q. Well, now, is this rock work we have been talking about, does that have anything to do with the 80 acres? A. No.

Q. Does it have anything to do with the roads that were necessary in order to log the timber on your father's farm?

A. Not on that piece, no.

(Testimony of Carl Stegmann.)

Q. Did it on some other piece?

A. Well, I used part of that road this summer, this fall, on a [1301] piece. The road is still there.

Q. To haul timber off your father's farm?

A. That is right.

Mr. Strayer: That is all.

Examination by the Court

Q. Was any of that road built to take any timber for Walter Stegmann?

A. Well, he did log some off.

Q. What year?

A. Oh, this was several years ago.

Q. Before the road was built? A. Oh, yes.

Q. Has he still got timber in that area?

A. No.

Q. Why did Walter Stegmann build that road?

A. Well, I think he made an agreement to put—he had to put the road back in shape, something like that, I just imagine.

Q. Made an agreement with whom?

A. With his dad who owns the land now.

Q. You thought it was—what was the condition of the road before they put the rock in?

A. Well, it was in pretty fair condition then to haul logs down over it. Then I suppose he had to put rocks in it to put the road back in condition.

Q. How many yards of rock were on that road before they began [1302] to haul?

A. There wasn't any.

(Testimony of Carl Stegmann.)

Q. There wasn't any? A. No.

Q. How much rock was put on after?

A. Oh, boy, that has really got me there.

Q. Pardon?

A. That has really got me there.

Q. How many thousand feet of timber did he move over the road?

A. That I really couldn't say either. That I don't know.

Q. In other words, you do not know very much about this transaction except on the day, on August 18th, when you were out there in front of Mr. Winans' place; isn't that right?

A. That is correct.

Q. And everything else you have forgotten about?

A. Just what was his business. I don't pay a great deal of attention to it.

Q. And the rock on the road was his business and not your business? A. That is right, yes.

Q. But you were living on the place all the time? A. That is right.

Q. Who talked to you about this transaction recently?

A. Well, the first I knew of it was when Mr. Jaureguy there talked to me about it. He called me up here. [1303]

Q. Who? A. Mr. Jaureguy.

Mr. Jaureguy: That is me.

The Witness: That is where I got acquainted

(Testimony of Carl Stegmann.)

with him. He called me up. I didn't even know what he had been talking about.

The Court: You had not talked to your brother Walter about this transaction at all since it happened?

A. No, no.

Q. You do not see him very often?

A. No, not here lately I haven't. I haven't since he has moved out of McMinnville now. I have not seen him very often.

The Court: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. That is, you came to my office with your brother some little time ago?

A. That is right.

Q. And I questioned you about the trip up to Lost Lake? A. That is right.

Q. I did not question you about this gravel business and those other things?

A. No, you didn't.

Q. You told me, just like you have said here today, that you couldn't remember anything that had happened up at Lost Lake, [1304] and I asked you about things, too, that you recall?

A. I would say——

Q. I quizzed you and tried to find out?

A. I don't remember anything about it because I was not paying any attention to it.

(Testimony of Carl Stegmann.)

Q. I say, I quizzed you about it and asked you about it and tried to find out whether you had any recollection or if there was anything said about details, anything else, and you said, just like you have said here, that you were along for the ride and didn't know what they said?

A. That is right.

Q. But you did remember that you saw Chet Parker up there? A. That is right.

Mr. Jaureguy: That is all.

Mr. Ryan: No further questions.

Recross-Examination

By Mr. Strayer:

Q. Did you talk with either of the Parkers before this trial? A. No.

Q. You have never talked with them about this August 18th transaction?

A. No, I never have.

Mr. Strayer: That is all.

The Witness: The fact is, today is the first time I have seen Mr. Parker since that day. I believe I have seen him drive [1305] by in the car, but never have talked to him.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: That is all.

The Court: That is all.

(Witness excused.)

The Court: We will take a recess.

(Recess taken.) [1306]

CLYDE A. SMITH

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Where do you live, Mr. Smith?

A. Portland.

Q. You have lived here how long?

A. Since December 7, 1949.

Q. What is your business or occupation?

A. At present I am unemployed. My business generally is timber.

Q. Have you been connected in any way with the Multnomah Plywood Corporation?

A. I have.

Q. In what capacity?

A. As head of their log department and log buyer.

Q. Were you an officer of the corporation?

A. I was.

Q. What was your position?

A. I was vice president and member of the Board.

Q. What did you say you were beside the log buyer?

A. I was acquiring timber for them also.

Q. How long were you—for how long were you in the business of buying timber for the Multnomah Plywood Corporation? [1207]

(Testimony of Clyde A. Smith.)

A. Since it was first started in December of 1949.

Q. Prior to that time had you had any experience with respect to the purchase or sale of timber?

A. With Peninsula Plywood in Port Angeles.

Q. How long were you with them?

A. I was with them two different times, early in the 40's—I say early in the 40's, it was from November in 1941 until March or April, I believe, of 1943. Then I was in Oregon for a time.

Q. Where were you for a time?

A. I was in Oregon for a time. Then I went back to Port Angeles in 1945 in the fall, September to be exact.

Q. You were there that time how long, until?

A. Until December of 1949.

Q. When you went with Multnomah?

A. Yes.

Q. Do you recall investigating and negotiating with respect to purchasing some timber from the defendant, Chet Parker, in this case at Lost Lake?

A. Yes.

Q. How did you first learn about that? Was it through Chet Parker?

A. Yes, it was. I can't recall whether it was by phone or in person.

Q. Prior to that time had you had anything to do with purchase [1308] of other timber from Chet Parker for the Multnomah Plywood Corporation?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. What timber had you purchased from him before that?

A. It was called the Bear Creek Tract, near the Nestucca River in Tillamook County.

Q. About how much was involved in that purchase?

A. It seemed like it was between six and seven million feet of timber.

Q. How long before the negotiations on the Lost Lake timber was the purchase made on the Bear Creek timber?

A. It was early in the year, perhaps in January or the early part of February of 1951.

Q. Had your contacts and negotiations with Mr. Parker been satisfactory up to that time? I mean in connection with the Bear Creek or any other negotiations you had with him?

A. Very good, quite satisfactory.

Q. Did you generally find him a man of his word? A. Yes.

Q. Now, after you first discussed this timber with him, what was the next contact? Did you have occasion to have a survey made?

A. You are speaking of the Lost Lake timber now?

Q. Yes, the Lost Lake.

A. Yes, I contacted our cruiser, who was Roy Kenny, and asked [1309] him to go up there and look at it.

Q. Now, as I understand it, Roy Kenny was not

(Testimony of Clyde A. Smith.)

devoting his full time to work for the Multnomah Plywood Corporation, was he?

A. No, he was on a retainer basis, giving it at least two weeks of each month.

Q. Did he furnish you with a cruise of that property? A. He did.

Mr. Jaureguy: I think in order to expedite matters I will offer in evidence Exhibit 116, which is a cruise by Roy Kenny of the Lost Lake timber. Everybody has seen it.

Mr. Buell: We will object to the receipt of that in evidence unless counsel is in a position to assure us that Mr. Kenny will be present for examination.

Mr. Jaureguy: Well, I will assure them that he will be present, and I will also say, if they will permit me to refer to the cruise and discuss it, why then, I won't offer it until after he testifies.

Mr. Buell: That is all right, yes.

Q. (By Mr. Jaureguy): Handing you this Exhibit 116, is that a copy of the Kenny cruise?

A. It appears to be. This is the type of cruise units that he used.

Q. Did you come to any decision as to whether it was desirable for Multnomah Plywood Corporation to purchase this timber if they could make a deal with Mr. Parker? [1310] A. Yes.

Q. Did you have a meeting of the Board for the purpose of considering that question?

A. Yes, we did.

Q. Do you remember when that meeting took place?

(Testimony of Clyde A. Smith.)

A. It was the evening of August 20, 1951.

Q. Now, I would like to offer in evidence a certified copy of the meeting of the Board of Directors, which is Exhibit 117.

The Court: Any objection?

Mr. Strayer: No objection.

The Court: It may be admitted.

(Document, certified copy of the minutes of the Board of Directors' meeting of August 20, 1951, of Multnomah Plywood Corporation, marked Defendants' Exhibit 117 for identification and received in evidence.)

Mr. Jaureguy: I do not care to have the witness read it now.

The Witness: I just read my name on it. I am sorry.

Mr. Jaureguy: That is all right.

Q. You say that meeting was on August 20th?

A. Yes.

Q. Besides the members of the Board, who else were present?

A. Mr. and Mrs. Parker were invited in and attended part of that meeting.

Q. Before that meeting did you have negotiations with them or [1311] discussions with them as to what they would be willing to do and you would be willing to do? A. Yes.

Q. Just tell us what those negotiations were?

A. Well, now, I can't recall the date that we talked about it.

(Testimony of Clyde A. Smith.)

Q. Do you mean it was before the meeting at an earlier date, or was it on the same evening?

A. It might have been in the earlier afternoon or evening.

Q. Of the same day?

A. Of the same day. I can't remember exactly about that. I remember especially of them being at this meeting, but the negotiations prior to the meeting went something like this, that I was interested in the timber although I had not seen it yet. I was going entirely on the recommendation of our cruiser, Mr. Kenny, who was, in my estimation, a very reliable man.

Q. His recommendations with respect to what, the quality and kind of timber?

A. Yes, his ability as a cruiser and timber consultant I respected quite highly.

Q. You mean you respected him not only as a cruiser but also with respect to the quality of the timber?

A. I say his ability as a cruiser and timber consultant, which would take in the quality of the timber, but when I was talking with Mr. and Mrs. Parker about coming to some kind of an arrangement to purchase this timber, of course, they wanted a down [1312] payment. They wanted, it seemed to me, like something around sixty thousand, seventy thousand dollars. I am not exactly sure about what the price was, but on this Bear Creek property, due to a bad logging year, and we were getting started late—I say bad, it was wet in the spring and we were closed by fire, and we had a lot of road build-

(Testimony of Clyde A. Smith.)

ing to get in there—we did not take all of the peelers out of that timber, out of that tract, so, consequently, the payment was due on it. There was still more than enough timber left. The payment due was forty-two, forty-three thousand dollars, but the value still was on the land and Mr. and Mrs. Parker were willing to let us apply that payment which was due on Bear Creek, apply it on the Lost Lake property, plus \$25,000, which would make our down payment on that timber.

Q. Which would make your down payment about \$67,000? A. Something like that.

Q. But then it would postpone the \$42,000 payment on Bear Creek?

A. Yes, we were to pay that at what time later next year as it was logged, or at some specific date to be decided upon later.

Now, in addition to this there was other reasons, too, that we would like to have—while we wanted the timber, we were not in too good a position to talk cash because we were acquiring quite a block of timber down in Douglas County, the southern part of Douglas County. There was a timber owner down there by the name of McFadon, and he was going to offer a considerable [1313] amount of timber for sale right after the first of the year, which would be January, 1952, and it was quite important that the company have some of his timber, and we wanted to preserve our capital so that we would be able to have some money to deal

(Testimony of Clyde A. Smith.)

with Mr. McFadon when his timber was put on the market.

So, consequently, Mr. and Mrs. Parker agreed that they would deposit \$100,000 in escrow in a McMinnville bank in return for a mortgage on what is known as the Barbour tract of timber down in the Dutchman's Butte area that we owned; that we could use this money that was to be put in escrow to buy this timber of McFadon's, for a down payment at least on that timber.

Q. That is about the sum total of the negotiations you had with them? A. That is right.

Q. Then you attended the meeting; and who was president of the corporation at that time?

A. F. A. Johnson.

Q. Was he present at the meeting?

A. No, he was not.

Q. He was not present? A. No.

Q. Then, have you read the minutes?

A. I have. It has been some time since I have read them.

Q. Would you say that the minutes correctly set forth what took place at the meeting? [1314]

A. As I remember, the last time I read those minutes, they are correct.

Mr. Jaureguy: I would like to go over this partly so that I can have part of it in the record.

The Court: Go ahead.

Q. (By Mr. Jaureguy): This certified copy says: "Mr. Clyde Smith, together with Mr. and Mrs. Chet Parker, presented some details having to

(Testimony of Clyde A. Smith.)

do with the Lost Lake tract of timber which the Parkers are offering to the company for a total price of \$180,000. The Parkers said that they would accept a down payment of \$25,000. We owe the Parkers a balance of \$42,000 on the Nestucca River tract.”

That is spelled N-a-s-t-u-c-c-a. It ought to be N-e-s. shouldn't it? A. Yes.

Q. “——on the Nestucca River tract which we are purchasing from them. They are willing to apply this \$42,000 to the Lost Lake tract which, together with the \$25,000, will make a total of \$67,000. Inasmuch as they want \$100,000 applied to this purchase, they are willing to accept the difference of \$33,000 at the time we would start logging operations.”

I don't know as you testified to that.

A. No, I didn't. I remember now, that is correct.

Q. “The balance of \$80,000 would be required of us at about the rate of \$25,000 a month figuring that logs would be removed at [1315] a rate of about 1,500,000 feet a month.

“The Nestucca River tract balance of \$42,000 could be paid for after January 15, 1952.”

So that you mean that you were making—that was being deferred from August until January?

A. Yes.

Q. That is correct, isn't it? A. Right.

Q. “The Parkers stated that they would be willing to deposit \$100,000 for our use if we needed it

(Testimony of Clyde A. Smith.)

to handle the McFadon tract, if that came to an issue and would in turn be willing to accept as security for the \$100,000, title to the Barbour tract."

Have you referred to that tract in your testimony?

A. Yes, I did. That is a tract that is down in the West Fork area in Douglas County.

Q. That \$100,000 is what you wanted to have available in case you wanted to buy some timber in Southern Oregon after the first of the year?

A. Yes.

Q. "The tract in question is supposed to cruise about 6,000,000 feet."

Who said that?

A. I think those were Mr. Parker's words.

Q. "Roy Kenny's incomplete cruise is in excess of 4,000,000 feet." [1316]

What do you mean by an incomplete cruise?

A. Well, I mean that he didn't take a 40% cruise or a 20% cruise. He went through the timber and he walked through it and estimated that there would be about that much there.

Q. His cruise refers to a "Recon" cruise. What does that mean? A. Reconnaissance.

Q. Reconnaissance cruise.

"He reports about 60% peelable logs and of very good quality. The Parkers have offered us the use of their boom at Hood River for rafting purposes. Smith estimates a cost of \$60 a thousand feet at Hood River, including the stumpage. Mr.

(Testimony of Clyde A. Smith.)

Parker said a road about one-half mile in length would have to be made in order to reach the timber.”

Did you estimate \$60 a thousand at Hood River?

A. Yes, I did at that time.

Q. Did that include building of the road?

A. No, we figured that the road would carry itself.

Mr. Strayer: What was that?

The Witness: I say we figured that the road would carry itself where it was located. Why I say carry itself is that generally when you take a road site there is some timber on it, and where this road would have been placed, the location of the road was on higher ground in good timber, good peeler quality fir.

Q. (By Mr. Jaureguy): Well, was that peelable quality fir part of this Parker tract? [1317]

A. No, that would have to be—the right-of-ways would have to be obtained from the Government, and in order to miss the park area up there we would have had to go in up on the hill with that hemlock and cedar that is closer to the lake.

Q. “After Mr. and Mrs. Parker left the meeting, further discussion and consideration took place. Mr. Smith said he had not seen the timber but intended to do so this week, and at the same time invited others of the Board to go with him. It appeared that the Board wanted more information as well as time to give the proposition, so far as financing is concerned.”

(Testimony of Clyde A. Smith.)

That is the end of the extract of the minutes.

Was there anything else that occurred there that has not been covered either by your testimony or in the minutes? A. At the meeting?

Q. Yes. A. No.

Q. Or after, or at that time and place, whether at the meeting or afterward, or before, it has been pretty well covered now, so far as you can remember?

A. The only thing, at the meeting, I think, after Mr. and Mrs. Parker had left, I did invite some of the other Board members to go up with me and look this timber over, and there was two of them decided to go, or it was decided that two of them should go.

Q. Who were those two?

A. Clyde McClain and Freeman Tollison. [1318]

Q. Did you later go up to see the timber?

A. I did.

Q. When was that? A. On Wednesday.

Q. Wednesday, did anybody take you up to show it to you?

A. We met Mr. Parker and his son at Hood River, and then we went in their car to the lake and it was really his boy that showed us where the corner was.

Q. His boy did? A. Yes.

Q. You followed them up to the lake?

A. Yes.

Q. Was there anybody else there besides you and the two members of the Board and Mr. Parker and his boy?

(Testimony of Clyde A. Smith.)

A. Yes, there was also some loggers that were logging for a company on the Bear Creek tract. I asked them to come up and take a look at it, too. I wanted them to look at it and give us a figure on what they would want to log it for.

Q. That is, what they would charge you for logging that tract?

A. That is right, putting the logs in the water.

Q. Did you get the information from them, what they would——

A. No, no.

Q. You didn't get that?

A. No.

Q. Why didn't you get it? [1319]

A. The reason—I don't know whether the company ever got any information or not, but before they had an opportunity to submit their figures, I had severed my relations with the timber department of Multnomah Plywood.

Q. Now, you say in this, in the minutes here, that you estimated a cost of \$60 a thousand feet at Hood River, including the stumpage. You had to assume certain logging figures for that?

A. That is right.

Q. And then if it was \$60, were you primarily in the cost at Hood River or the cost at your plant in Portland?

A. I figured that—considering the quality of this timber, if we could put those logs in the water at Hood River for a price of \$60, or even a little bit more, the value to us was there. There was plenty of cushion because so much of it was peelable.

(Testimony of Clyde A. Smith.)

You see, even the larch and the white pine could be peeled along with the fir.

Q. Well, if it cost you that in Hood River, what did you estimate it would cost at your plant in Portland?

A. Whatever the price would be in the water there, plus the towing, and if we wanted to warehouse that, the warehouse and storage charges.

Q. But do you have in mind now what those entire charges would be?

A. I can't say right offhand. The towing charges fluctuate as [1320] to the rate, you know, set by the ICC, but, of course, I would have to look at the rate book to see what they would be.

Q. Now, was that estimate of \$60 a thousand based on a price set forth in the minutes as to total price of \$180,000, total stumpage of \$180,000?

A. Would you repeat that, please?

Q. The \$60 price that you estimated at Hood River, was that on the assumption of purchasing the timber for \$180,000?

A. Yes.

Q. Plus all the additional charges of getting it down the Hood River?

A. Down the river.

Q. In the river at Hood River?

A. Yes.

Q. In the Columbia River at Hood River?

A. That is right.

Q. You made some reference to the larch and hemlock peelable. We will take up larch first. Is that the same that is sometimes known as Noble fir?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. I notice Mr. Kenny's cruise has 50% of them peelers?

A. Yes, there would be that much, at least that much peelers, with a possible—more percentage of peelable in there.

Q. What is the difference between a peeler and a peelable log?

A. Well, the peeler log, you have to recover so much face stock [1321] on it, but a peelable log is a log that you have peeled that is suitable for readily cutting, which you only expect to recover in plies of the veneer.

Q. The core inside? A. The core, yes.

Q. Now, on 3-ply plywood, I take it that one is core and two are face?

A. Faced in the back, whatever the——

Q. And five, why, there would be two cores or three? A. Yes, three.

Q. Three?

A. Yes, they go all by—the Douglas Fir Plywood Association considers larch or hemlock and even pine for core.

Q. Now, getting back to your trip up there to look at this timber, what did you do after you got there, you and the other four?

A. On the property?

Q. Yes.

A. Well, I started pacing up the line from the stake, you know. I got my bearings there and started pacing so that we would know where we were at, you know, and looked at the timber, and

(Testimony of Clyde A. Smith.)

we spent, I would say, well, all day. It was dark when we got back to Portland. We spent all day in the timber.

Q. You and the two loggers and the two members of the Board?

A. Two members of the Board.

Q. Two other members of the Board?

A. Yes. [1322]

Q. Were those two other members of the Board, had they any experience in cruising, or anything like that?

A. No, they had not, but they were old plywood hands. One of them was a peelerman.

Q. One of them was what?

A. A peelerman, the latheman.

Q. That is, this corporation operates somewhat on a cooperative basis; is that it?

A. It is a cooperative. I will take exception to that. It is a straight corporation with a co-op aspect to it.

Q. It is organized as a private corporation, but in its bylaws it provides that the stockholders have preferred rights of employment?

A. And in practice you do not declare—I mean, I say you, I mean this type of corporation does not declare dividends?

A. Generally, no, although they have.

Q. What would normally be profits are added to the wages? A. Up to a certain amount.

Q. That is why the men that work in the factory are members of the Board? A. That is right.

(Testimony of Clyde A. Smith.)

Q. One of these men was a peelerman?

A. Yes.

Q. What did the other one do; do you remember?

A. I think at that time he was stock rustler. He is the man [1323] that gets the material up to the speeders where they lay the plywood out.

Q. He discards what is not good material to go through the plywood?

A. Well, personally he does not do that. That is done through a process, you see.

Q. What did you think of the timber? What conclusions did you come to?

A. Well, I was well satisfied with the timber. It was good quality.

Q. What estimate did you make finally as to the amount of timber there?

A. Well, I had Mr. Kenny's cruise to go by, and I was satisfied that there was all there was there that he said was there.

Q. Well, he said his incomplete cruise showed 4,255,000? A. Yes.

Q. Parker's statement was 6,000,000.

A. Well——

Q. Was Parker a little too optimistic; do you think, or did that——

A. I was not too concerned because the value for our purposes at the price of \$180,000 seemed to me like it was there. I recommended that the company buy it.

Q. Did you make any effort to segregate what

(Testimony of Clyde A. Smith.)

was on, or did you know that there were—from the standpoint of legal propositions of real property—there were two different parcels, but was [1324] Lot 1, that was the northeast quarter of the northwest quarter of the Section——

A. Yes, I knew that there were two parcels, yes.

Q. Did you in your own mind segregate at all the values on one from the values on the other, or did that make any difference to you?

A. No, I didn't, with the exception of just a small area in the northeast portion of this lot that is next to the lake. I guess that has been called the Government lot.

Q. Government Lot 1.

A. The rest of it was swamp and cedar.

Q. So would you be able to give us your best judgment as to the proportion of value in the 40-acre tract and the proportion of value in Lot 1?

A. That would be kind of hard to do because cedar is pretty hard to get to a sawmill, cedar in the river, you know.

The Court: Mr. Jaureguy, I do not think he has indicated enough acquaintance with the volume of timber on each of the tracts involved to express an opinion as to the value of the timber on each tract. He might have the information, but you have not elicited it.

Mr. Jaureguy: I want to thank you for calling my attention to the deficiency there.

Q. What did you observe with respect to the

(Testimony of Clyde A. Smith.)

various kinds and quantities of timber and quality with respect to the two tracts, [1325] the 40-acre tract and the 15-acre tract?

A. As I paced on the north line when we first started, I passed what I thought was, would be the corner of the lot, and as we came back down through I was still pacing and there was quite a decided difference along this line—that would be the north and south line that divides the two lots—of the species of timber in this 40-acre tract. It started rising, the ground began to get a little higher, and it changed from cedar to fir and hemlock, larch, and white pine, and on the small tract it was mostly cedar with the exception of the timber in the northeast corner of it.

Q. Well, what is the relative value, what is the difference in values for your purposes over the cedar of the other types of timber there?

A. The cedar is only good for trading purposes.

Q. How much do you get for trading purposes?

A. It depends on how you can trade it, but generally it is not very valuable because it goes to shingle stock, and very few shingle mills have anything to trade, but the other timber, all of that on the 40 acres and part of the lot, the timber that was there that was of a peelable quality was very good, there was enough there to make it attractive.

Q. Well, now, based on what you observed on that day, can you give us your best estimate as to the relative values for your purposes as between the 40-acre tract and the Government Lot 1? [1326]

(Testimony of Clyde A. Smith.)

A. Well——

Mr. Krause: If the Court please, before that is answered, I don't think we ought to get into special purposes here. I think we are only concerned about the value of the timber on the two tracts, not for the purposes of Multnomah Plywood. They might be quite different than other people.

Mr. Jaureguy: Yes, I will amend the question and I agree with you.

Q. What would be your opinion as to the relative values of the stands of timber on the 40-acre tract as compared with Government Lot 1?

A. You mean dollar-wise?

Q. You can express it either dollar-wise or by fractions, whether one is worth so much more than the other.

A. There is a lot of difference in acreage there, and that is the hard——

Q. Government Lot 1, when you take out the allotted area, I think was about 15 acres.

A. About 15 acres.

Q. Then you have the 40-acre tract, and then you have described the difference in the stands of timber, the quality of timbers, the kind.

A. With the exception of this portion, I would say two acres maybe three acres, might even be more. It is just merely a guess on my part. [1327]

Q. We do not want mere guesses, but we would like your opinion, if you have one, as to how much more valuable the 40-acre——

A. I can answer you this way. The peelable

(Testimony of Clyde A. Smith.)

quality of timber on the Lot 1 is just as valuable to plywood as the peelable quality of timber on the 40 acres.

Q. Yes, but that is not what I am getting at. Maybe I did not make myself clear. Do you think that the timber, the total value of all the timber on the 40-acre tract was greater than the value of the timber on Lot 1? A. Yes.

Q. How much more? A. Considerably.

Q. Well, would you say twice, or three times that, one-half, or what?

A. Yes, twice, yes, three times.

Q. Three times? A. Yes.

Mr. Buell: Did he say three or two?

The Witness: Three times.

The Court: He said two; now he says three times.

The Witness: Yes.

The Court: Would you say that that value on the 40-acre tract constituted about 75% of the total value?

The Witness: I believe it would, 70%.

The Court: 70%? [1328]

The Witness: Yes.

The Court: So you would allocate 70% to the 40-acre tract and 30% to the 15-acre-plus tract?

The Witness: Well, should we have logged it, it would have entered on our books actually what came off of it. How it would have been allocated, now, I can't say.

(Testimony of Clyde A. Smith.)

The Court: Mr. Jaureguy didn't ask. Will you tell him what you want, Mr. Jaureguy?

Mr. Jaureguy: Well, he has answered it.

Q. Well, as I understand it, you have stated that you believe that of the total timber on both tracts, the value of that on the 40-acre tract is 70% of the whole, and the value of that on the Government Lot 1 is 30% of the whole?

A. Yes, that is, footage-wise.

Q. Now, did you notify Mr. Parker or Mr. and Mrs. Parker what your decision had been, whether you wanted to buy it or not?

A. Well, as it was stated there in the decision—in the minutes of the Board meeting, they wanted more time.

Q. To decide? A. To decide.

Q. But, I take it that in addition to requesting more time, they wanted to get your views after you had examined the tract? A. They did.

Q. Yes.

A. We went up there and I reported back just what I have stated [1329] here, very good quality timber, and it was something that we could use, and I recommended that they buy it.

Q. Was there any recommendation as to whether they should bind the bargain by the earnest money, or anything of that kind?

A. Yes; yes, I did, I wanted to place this \$25,000 in escrow.

Q. What do you mean "this \$25,000"?

(Testimony of Clyde A. Smith.)

A. The \$25,000 that we spoke of as part of the down payment.

Q. Oh, yes. Who did you have that discussion with? A. Mr. Bryson.

Q. Who is he?

A. He is secretary-treasurer of the corporation.

Q. What did he say about that?

A. He said that we had it all right, enough, but he didn't think we would be able to do it quite so quick.

Q. Better go a little slower on putting up real money? A. Yes.

Q. Well, then, what did you do? What was done? Was there a further step in consummating this transaction?

A. Then we went to Mr. Bledsoe's office to draw up the balance of our—an agreement, you know, and a contract of what we had discussed.

Q. Do you remember when you went there?

A. I can't say the day. It was in the a.m., in the morning.

Q. In the morning?

A. Of the day we went there. [1330]

Q. Did you hear Mr. Bledsoe's testimony?

A. I did.

Q. He said it was on the 24th.

A. He said it was on the 24th at 11:30 in the morning.

Q. The 24th would be four days after the directors' meeting? A. Yes, it would be——

(Testimony of Clyde A. Smith.)

Q. And I am sure it would be two days after your trip up there with the four others.

A. That is right.

Q. Who else besides you went to see Mr. Bledsoe?

A. Mr. and Mrs. Parker were with me.

Q. Just tell us what happened there with Mr. Bledsoe?

A. Well, we told him what we had in mind, and there was some discussion, you know, how it would be negotiated and put on paper, and I can't say how long we was there. The plan was agreeable to us, that is, Mr. and Mrs. Parker and myself representing the company, and he was to put it in rough form and submit the rough draft to the parties concerned for examination, correction, or rejection.

Q. Did you also discuss the Bear Creek matter there?

A. Yes, we did. It was going to be part of this transaction.

Q. Well, the Bear Creek money eventually went into escrow with the Bank of California, as I recall, or do you know anything about that?

A. I don't know anything about that. [1331]

Q. Did you ever get, or do you know whether the company ever got a draft of an agreement from Mr. Bledsoe?

A. I couldn't say.

Q. How long after that did you stay in the timber buying department?

A. It was just a few days.

(Testimony of Clyde A. Smith.)

Q. Where did you go then? I mean, what business did you go into?

A. Well, I worked in the plant for a while.

Q. What was the purpose of the change?

A. Well, I was away from home so much and my wife is sick. She still is sick and I just didn't like to be away from home any longer.

Q. What eventually happened to this deal? Did it go through, or do you know what happened?

A. No, it apparently didn't. I don't know what was finally decided upon.

Q. That is, you don't know first-hand?

A. No.

Q. But you know it didn't go through. They didn't get the timber, didn't log it?

A. Why it didn't, I don't know.

Q. You don't—

The Court: Didn't you remain on the Board of Directors?

The Witness: No, no. I resigned from the Board of Directors [1332] right soon after that.

Q. (By Mr. Jaureguy): On that Bear Creek property, did you know whether Mr. Parker had a better offer elsewhere than he did from the Multnomah Plywood Corporation?

A. I had heard it, yes.

Mr. Buell: I move that that be stricken, your Honor.

The Court: What difference does that make? I have let in a lot of evidence which you think is inadmissible, but how do you justify that?

(Testimony of Clyde A. Smith.)

Mr. Jaureguy: I cannot justify to the answer being admissible. I do justify the inquiry originally, but if all he can say is what he heard about it, then whether it would be admissible, if he had first-hand knowledge, is purely academic at this stage, I think, so you can take the witness.

The Court: Mr. Ryan?

Mr. Ryan: I have no questions.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Smith, it did not make any difference to you whether you were paying \$180,000 for a little over four million feet or whether there were six million feet there?

A. I figured this, that if there was four million feet there with the type of timber it was, that we could peel, that we could come out at that. [1333]

Q. But it cost you about \$45 a thousand stumpage if you had four million feet?

A. That is right.

Q. And a lot of the timber was a type that you could not even get \$45 a thousand for it down here at Portland?

A. That is right.

Q. You could not even get your stumpage out of some of it?

A. That is right.

Q. You say nothing about logging costs, hauling it and delivering it down at Hood River?

A. But you see, at the price of peelers, we were

(Testimony of Clyde A. Smith.)

buying mostly on the open market, were 85, 100 and 110 dollars—that is for number three, number two and number one, we couldn't buy a peelable type of log such as number two saw logs, we couldn't buy those on the open market—so even at that price I felt, in fact, the figures showed that we could still put those peelers into the plant for less than what we were paying for them on the open market.

Q. So you had not paid any particular attention to Mr. Parker's statement that there were six million feet on the property?

A. No, that was incidental to me.

Q. You were relying on Kenny's cruise?

A. That is right.

Q. Which showed four and a quarter million?

A. And then I went up and looked at it myself.

Q. Yes, well, but of course—— [1334]

A. But I recommended to the Board that we actually buy it, although before I recommended to the Board Mr. and Mrs. Parker were in and met with the Board.

Q. You already recommended it before you looked at it? A. No.

Q. Oh, you had not? A. No, I had not.

Q. Well, of course, with your view of the timber, you could not get any reliable idea of about how much timber was there by just looking at it, could you?

A. Well, I have a working knowledge of cruising timber myself although I don't represent myself as a cruiser. I have been in the timber enough and

(Testimony of Clyde A. Smith.)

inspected it that I felt that I could rely on my own—what I could see.

Q. From your view of the thing, did you think that there was more or less than four and a quarter million feet?

A. I was not in doubt at all that we would get four and a quarter million out of it.

Q. You thought there was all of four and a quarter million? A. Yes.

Q. And, according to Kenny's cruise, it shows that about half of the timber, or just about half exactly, was on the 40 acres and—or, just twice as much timber was on the 40 acres as on the other piece; isn't that right?

A. I guess maybe it is. I can't say yes or [1335] no.

Q. Well, didn't you have a map——

A. I had one.

Mr. Jaureguy: I will hand it to him.

The Witness: But I will have to look at it again.

Q. (By Mr. Krause): You have got a total of 4,255,000 of which 2,870,000 is on one piece and more than 435,000 on the smaller piece there; isn't that right? A. Yes.

Q. So the relationship there is about two to one instead of as you have put your value, three to one?

A. Well, the value——

The Court: He said 70%.

Mr. Krause: Well, his testimony was three to one, and later he put it 30 and 70, and that is still

(Testimony of Clyde A. Smith.)

practically three to one, or two and a half, pardon me.

The Court: On your figures it would be sixty-six and two thirds. It is only a difference of three and a third per cent.

Mr. Krause: Very little difference, but that was your idea about the division, both as to the quantity and the value, is it, Mr. Smith?

A. Yes, I will say that.

Q. There was no greater difficulty in logging the smaller piece than the larger piece, I suppose?

A. Yes, there would be.

Q. Why? [1336]

A. Swamp, there is quite a lot of swamp there.

Q. I thought you said there was not very much timber on the swamp, and what there was there was cedar?

A. You asked me if there would be any greater difficulty in logging it.

Q. Yes.

A. And it takes the same kind of a road to take out cedar as it does fir, and it would be the difference in the value of the two trees, what you would get off of it. Your logging costs would be greater.

Q. Well, in the first place, you knew that most of that swamp was in the reserved area, wasn't it? The swampy part of it was not even in the deal?

A. I believe at the time that I looked at it I knew that there was going to be a reserved area there, but I didn't know where the lines would be.

Q. But the swampy area had very little timber

(Testimony of Clyde A. Smith.)

on it anyway; isn't that right? A. Yes.

Q. Then it was after you got on to firmer ground that you got in to trees? A. Yes.

Q. What were you figuring the logging costs on when you were estimating that it would cost \$60 to put the stuff in the water at Hood River? [1337]

A. I figured \$30 for logging and transportation.

Q. \$30 for stumpage? A. Yes.

Q. Well, but on a basis of four and a half million, you would have to figure between forty and forty-five dollars a thousand for stumpage, wouldn't you?

A. You asked me how much the logging, what I was going to pay for logging, what I estimated the cost would be.

Q. You said your logging costs would be about \$30 a thousand; is that right?

A. Yes, and transportation.

Q. Logging and transportation? A. Yes.

Q. You estimated that it would cost you \$60 a thousand to put the logs in the water at Hood River?

A. Yes.

Q. That is in the minutes of the meeting there?

A. That is right.

Q. You told them \$64; therefore you were \$15 off; \$10 or \$15 off as to the cost of your logs down at Hood River on your own estimate?

A. There is no exception in there if there was six million feet.

Q. But, Mr. Smith, you saw the value of \$180,000 if there was only four and a quarter million feet?

(Testimony of Clyde A. Smith.)

A. That is right, I did. [1338]

Q. Actually, your logs would have cost you, on the basis of four and a quarter million feet, they would have cost you about \$75 a thousand at Hood River?

A. That is right.

Q. That would include cedar, hemlock, larch and peelable fir?

A. And peelable fir.

Q. Why do you call Roy Kenny's cruise an incomplete cruise?

A. It is a reconnaissance cruise.

Q. But in the minutes of the meeting it says that you told the Board that Roy Kenny's incomplete cruise is in excess of four million feet?

Mr. Jaureguy: That is not exactly what it says.

Mr. Krause: What does it say?

Mr. Jaureguy: It says this full sentence: "Roy Kenny's incomplete cruise is in excess of four million feet."

Mr. Krause : That is what I was reading.

Mr. Jaureguy: You were reading, "You told the Board that."

Mr. Krause: Oh, pardon me.

Q. Who told the Board that Roy Kenny's cruise was in excess of four million feet?

A. Who told the Board that?

Q. Yes.

A. Apparently I did, or I probably showed them the cruise sheet.

Q. Well, now, why was it called an incomplete cruise?

A. Well, there are two-run cruises; there are

(Testimony of Clyde A. Smith.)

four-run cruises; [1339] there are eight-run cruises, and the more you pass through timber, the more you see, and he was up there one day, and for that reason I don't think he made an eight-run cruise on it.

Q. Well, but the two-run cruise can be complete, can't it; a four-run cruise? One can be as complete as the other only you have not looked at as many of the trees on the place; isn't that right?

A. I do not quite agree with it personally on account of how fast the ground can change.

Q. At any rate, Roy Kenny was up there one day?

A. Yes.

Q. And his cruise was based on his working on these two tracts one day?

A. That is right.

Q. It was supposed to be a complete cruise, though, excepting that it was a reconnaissance cruise? He was supposed to have covered the entire property, wasn't he?

A. He was supposed to have gone up and looked at it, yes.

Q. All of it?

A. Well, yes.

Q. Not every tree?

A. Not every tree, no.

Q. Not every acre in the tracts?

A. But he was supposed to pace out the ground.

Mr. Krause: I think that is all. [1340]

Cross-Examination

By Mr. Buell:

Q. Mr. Smith, about how long was it prior to the time that you made the arrangements for Mr. Kenny

(Testimony of Clyde A. Smith.)

to go up and check that property that Mr. Parker first contacted you about it?

A. Well, if I remember right, Mr. Parker called the office and contacted me at Roy Kenny's place in Eugene.

Q. You were down at Kenny's place in Eugene?

A. I am quite sure that I was.

Q. Was that on a week day or a Sunday or a Saturday, or could you recall?

A. No, it would most likely be on a week day.

Q. Was that two or three days before Mr. Kenny went up to cruise it?

A. No; no, he left that night.

Q. He left that night?

A. No, it was probably on the 13th, because he said he would go right up.

Q. But it was during business hours on the day that he called? A. Yes.

Q. In other words, it was before dinner in the evening?

A. I stopped at his place that day, Roy Kenny's place in Eugene that day, and I am quite sure that I got a telephone call that day.

Q. You were down in Eugene seeing Mr. Kenny on company business, [1341] I suppose?

A. Yes, that is right.

Q. While you were at his house there in Eugene during the day, you got a telephone call from Mr. Parker? A. Yes.

Q. What kind of timber, or what kind of a deal did he say he had on the Lost Lake timber?

(Testimony of Clyde A. Smith.)

A. Well, I don't recall the conversation, but we were quite well satisfied with the dealings that we had had with him on Bear Creek, and I felt that it was worth investigation.

Q. Well, what I had reference to, Mr. Smith, was whether or not Mr. Parker said he owned some timber in Lost Lake or had an option on some timber, or was thinking of buying some timber from somebody that he might pass on to you?

A. No, I think he said he had some timber up there. I don't know.

Q. I see. Do you know Walt Stegmann?

A. Yes, however I couldn't have pointed Mr. Stegmann out of a crowd before this trial started.

Q. You had never met him personally, then?

A. Yes, I had.

Q. Prior to the time? A. Yes.

Q. That Mr. Parker first called you on this Lost Lake deal?

A. One day; I was with him one day. [1342]

Q. Was that in connection with some of Mr. Parker's business?

A. He showed Mr. Kenny and I the corner of the property down on Bear Creek.

Q. Mr. Stegmann showed you the Bear Creek lines, then; is that right? A. Yes.

Q. Did you say that Mr. Stegmann showed you the lines in the Bear Creek timber?

A. He showed us the common corner.

Q. Showed you the common corner?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. About when was it that you acquired the Bear Creek timber from Parker? Could you place the month at all or the portion of the year?

A. I can't say when it was that we acquired it. It was right near the first part of the year.

Q. Of 1951? A. Yes.

Q. Do you recall whether or not Mr. Parker mentioned Mr. Stegmann's name at all in connection with this property that he wanted you to go up and take a look at; the Lost Lake property I am referring to?

A. No, no, I didn't know anything about Mr. Stegmann dealing in connection with this at all.

Q. During the course of your negotiations with Mr. Parker, [1343] while you were thinking or contemplating purchasing this Lost Lake timber, did Mr. Stegmann's name ever come up? A. No.

Q. For all you knew, Mr. Parker owned the timber that he was offering you; is that correct?

A. That is right.

Q. Can you recall his making any definite statements to you that he did own it?

A. No, I think it was an assumption on my part.

Q. Just an assumption? A. That is right.

Q. There was no reference to options that he had, or—— A. No.

Q. Was there any discussion of whether or not Mr. Parker was going to furnish you any title insurance in connection with the property?

A. Well, now, that I cannot say. We left that up to our lawyers to see that the titles were all right.

(Testimony of Clyde A. Smith.)

Q. Can you recall anything being said about title insurance at the meeting in Mr. Bledsoe's office on August 24th with Mr. Parker and Mrs. Parker and yourself?

A. There may have been, but I can't definitely say that there was.

Q. Incidentally, Mr. Smith, you have attended a good portion of this trial; have you not?

A. Yes, I have been here all of it. [1344]

Q. The entire trial? A. Yes.

Q. The week before last also? A. Yes.

Q. I do not know whether or not you were asked on direct examination had you known Mr. Parker before you became connected with Multnomah Plywood? A. No, no.

Q. Mr. Kenny is not a professional timber cruiser, is he?

A. I don't think that he would—I don't think that he could be called a professional. He is a man familiar with timber and able to cruise timber, but he does more in the line of timber brokering.

Q. While you were upon the property itself, you were up there just the one occasion, were you not?

A. That is all, just once.

Q. About how much time did you spend up there on the ground?

A. Well, we left town—I say “we,” myself and the two Board members that went with me, we left Portland quite early in the morning and we were to meet Mr. Parker at Hood River, and we went

(Testimony of Clyde A. Smith.)

right up to the place, to the property from Hood River, and it was dark when we got back to Portland.

Q. Would you say you were up on the property about 6 hours, or more or less?

A. Yes, five or six hours. [1345]

Q. Five to six hours?

A. Five or six hours, yes.

Q. While you were up there, I take it you did not attempt to walk any systematic number of paces back and forth through the timber?

A. No, I didn't.

Q. It was more of an informational tour. You saw the timber, saw the corners, got a chance to look at the size of the trees?

A. That is right.

Q. But you didn't make any effort to examine the trees, estimate the number of defectives or the number of defective trees that there might be in the stand?

A. No, I didn't. I taped a few of the trees, you know, for diameter.

Q. You were in charge of both the log and timber buying departments of your company at that time?

A. Not at that time, no.

Q. Just timber? A. Timber.

Q. Did you have any connection with the log buying department?

A. That was mostly handled by the other men that was in there.

Q. But the two departments have to work——

(Testimony of Clyde A. Smith.)

A. I did buy logs occasionally, yes.

Q. Well, the two departments have to work closely together? A. That is right. [1346]

Q. Are you familiar with any trading agreements or trading arrangement that your company had with any other companies at the time for exchange of pulp logs, for example, for saw logs?

A. No, I can't say that I am familiar with anything like that.

Q. Well, isn't that what you would have had to have done with your—or wouldn't that have been the most economically practicable thing for your company to do with that hemlock and pulp wood that you get off of this tract, would be to trade it to one of the paper or fibreboard companies in exchange for peelable logs?

A. Yes, I beg your pardon. I would like to go back to that other question. I thought that you asked if I knew of any arrangement that we—any commitment such as a commitment that we might have had——

Q. I did ask you——

A. Is that what you asked me?

Q. That was the first question.

A. No, I didn't know of any commitment, but on the last question, now, yes, that would be the intent, to trade footage for footage.

Q. Well, it would be trading value for value, wouldn't it? A. No.

Q. In other words, you could not get an equal

(Testimony of Clyde A. Smith.)

number of footage in peeler logs for the same amount of footage in hemlock?

A. Generally, it takes two to one or three to one.

Q. Now, what could you have gotten for these hemlock logs in [1347] the Columbia River at the time you were thinking of acquiring this timber?

A. Per thousand?

Q. Yes.

A. I don't recall what the hemlock price was at the time.

Q. It wouldn't have been anywhere near \$75 a thousand, would it? A. No.

Q. You were familiar with the fact, were you not, that Mr. Kenny's cruise, for example, showed a total footage of hemlock of \$1,710,000 feet?

A. Hemlock, that much?

Q. Does that figure not sound right to you?

A. No, that don't sound right.

Q. You did not think there was as much hemlock as that?

(Witness consults document.)

A. That is right, there was a lot of that hemlock that was peelable grade hemlock. There was a lot that was pulp, but a lot that was peelable also.

Mr. Jaureguy: I didn't get the last part of your answer.

The Witness: I believe there was a lot of that hemlock that was peelable grade of hemlock.

Q. (By Mr. Buell): Mr. Kenny estimated 20%?

A. Yes.

(Testimony of Clyde A. Smith.)

Q. And the rest of it you would have had to dispose of under some trading arrangement or just sell it on the market at market [1348] prices?

A. That is right.

Q. Well, now, then, by the time, Mr. Smith, that you had paid \$75 on an average price for your logs in the river at Hood River and towed them to Portland, the price would be pretty well up to or greater than what you could have gone out and paid for regular number one or two or three grade peelers on the market, peeler logs on the market; isn't that right? A. If we could get them, yes.

Q. You say at that time you were considering that number two, as low as number two saw logs were peelable? A. Yes.

Q. But you say you could not get any of those on the market? A. No.

Q. Well, now, going back a minute to the question of logging, I understood you to say that you didn't make any allowance for the cost of road building because you felt that the road would carry itself because of the timber that would come off the road; is that correct?

A. That would be in the logging cost of the road. I cannot identify the breakdown of what I figured our logging cost would be, that is, for each thing, you know, yarding and falling and bucking and that, but I figured it would be \$30 at the river, and I also felt that there would be enough timber on the road to get into the property that it would nearly carry the road itself. [1349]

(Testimony of Clyde A. Smith.)

Q. Well, but you would have had to have gotten your right-of-way over United States Forest Service lands? A. Yes, that is right.

Q. And before buying, or rather, before getting the right-of-way, you would have to arrive at an agreement with the Forest Service to pay them the market value of the stumpage of any trees that you cut in connection with laying out a right-of-way?

A. We would have to pay them their appraised value.

Q. That would be a negotiated figure based upon the amount of footage on the right-of-way?

A. It would be based entirely on their figures. It would not be negotiated at all. They do not negotiate with you; they tell you what they want, and you pay it, or if it is a bad deal you pay more for it.

Q. Do I understand that the Forest Service would have given you such a low price on stumpage of the timber off the right-of-way that you would have made sufficient profit from that timber alone to take care of the cost of putting in the road?

A. I don't have any idea of what the Forest Service would have charged for that. It may have been \$30, it may have been more per thousand stumpage, but there is quite a lot of good timber up there, and there is—where that road would go in there is very little low-grade timber. It was up on the higher ground.

Q. Isn't it true, Mr. Smith, that the only possible consideration [1350] for your company con-

(Testimony of Clyde A. Smith.)

templating making that purchase from Mr. Parker was because of the financing arrangements that you hoped to accomplish along with it?

A. No, no; I would not say that.

Q. Well, that was one of the major items, was it not?

A. No, it is a good quality timber up there. I do not think that that would be a deciding factor at all.

Q. Was your company in the practice of entering into a final contract for that substantial amount of timber on the basis of an incomplete reconnaissance cruise, such as Mr. Kenny's in this case?

A. I don't know whether they had—as has been said before, the papers that were really written up by Mr. Bledsoe would be offered for consideration.

Q. I am sorry, you did not understand my question, probably. My question was whether or not your company had previously, while you were in charge of the timber department, entered into contracts or agreements for the purchase of good substantial amounts of timber on the basis of a cruise, incomplete reconnaissance cruise such as Mr. Kenny made in this case?

A. We had never bought a piece of timber that had that much value on one single piece before, on Mr. Kenny's reconnaissance cruise; however, we had bought several pieces of timber of less amounts that

(Testimony of Clyde A. Smith.)

his reconnaissance cruise was very satisfactory as it turned out. [1351]

Q. Would the figures you were talking of in this case—you would probably have had some provision in the contract relative to the minimum amount of timber that would have to come off of the property; would you not?

A. There might have been something like that in the final draft of the contract. I can't say whether there would or wouldn't.

Q. You also mentioned the question of having to build a road into the swampy area in the southern part of the 25-acre tract. What would have been the necessity for that? There would have been no occasion to build a road there, would there?

A. Well, it would depend on whether we logged with Cats or not. You have got to build a road with a Cat to go after the logs wherever the location is. A Cat road is a lot different than a truck road.

Q. Going back a moment, Mr. Smith, to the occasion when Mr. Parker first called you about this timber, didn't he tell you that—or didn't he say that Mr. Stegmann would meet Mr. Kenny on August 13th to go over this property?

A. On August, the morning of August 14th.

Q. The 14th, rather? A. Yes.

Q. He made arrangements for you—rather, for Mr. Kenny to meet Mr. Stegmann up there on the 14th?

A. I can't say whether Mr. Parker told me that or whether he told Mr. Kenny that. [1352]

(Testimony of Clyde A. Smith.)

Q. In any event, you knew that Mr. Kenny was to meet Mr. Stegmann up there?

A. I knew it after I see the cruise sheets. I see his name is on the cruise sheet.

Q. I think we are all in agreement here, Mr. Smith, that August 14th was a Tuesday, so then that would have been some time Monday afternoon that Mr. Parker called you?

A. It could have been Monday afternoon; it could have been Monday morning.

Q. Either Monday afternoon or morning?

A. It was some time during the day Monday, yes.

Q. With reference to this tract of timber, if you bought it when did you contemplate starting logging ?

A. Not until next year. It was too late then to take a chance on the early winter.

Q. Going to that occasion when you were up on the property, did Mr. Parker go over the timber with you?

A. No, he didn't even go on the land.

Q. Where did he stay?

A. He stayed in the trail.

Q. In the what?

A. On the trail before we got to the line, even.
Mr. Buell: No further questions.

(Testimony of Clyde A. Smith.)

Redirect Examination

By Mr. Jaureguy:

Q. You mean he stayed on the trail all day, or that you just [1353] left him?

A. No, no; we left him on the trail. He and his boy were apparently heading back to the car, and they didn't go with us at all.

Q. This Kenny cruise reference to the "hemlock, large trees of good quality, 36 inches, 20% peelers," you said that number two saw logs were sometimes used for peeling? A. Yes.

Q. Now, does this 20% peelers that he refers to, does that include these number two saw logs, or is it just those that technically qualify for peelers?

Mr. Strayer: I will object to that, your Honor. I don't know how Mr. Smith can interpret Mr. Kenny's cruise.

The Court: Answer the question.

The Witness: Will you restate it again?

Q. (By Mr. Jaureguy): Is it your understanding that this estimate of 20% peelers under hemlock means the 20% that will qualify with the technical definition of peelers, or does that include everything that you would peel, including——

A. No, that is just what would be classed on the river under the Bureau scale as peeler hemlock.

Q. I don't suppose you could give us an estimate of the percentage that would be peelable under your process? A. No, I couldn't.

(Testimony of Clyde A. Smith.)

Q. You say that this call from Mr. Parker may have been Monday, [1354] Monday morning, Monday afternoon, or could it have been Monday evening?

A. I rather think it was sometime during the day.

Q. You think it was prior to what, prior to six o'clock, say? A. Six.

Q. But aside from that, you could not tell us what time during the day? A. No, I cannot.

Q. You say that you didn't know the Parkers before you became connected with the Multnomah Plywood. During the time you were connected with Mutnomah Plywood, was your acquaintance with them primarily business; was it social, or both?

A. Business.

Q. Just business. That will be all.

Examination by the Court

Q. You went with the Multnomah Plywood when it was organized, didn't you?

A. Yes, I was with the organization.

Q. When was that organized?

A. Started on August 16th. We got the option August 16, 1949. It was finally, the papers were finally drawn up on December 23, 1949.

Q. You remained with the company as timber buyer and log buyer from that time until around August of 1951? A. Yes. [1355]

Q. Is it your testimony that during that time

(Testimony of Clyde A. Smith.)

the largest deal that came up was this one on Lost Lake for \$180,000?

A. The largest single deal.

Q. The largest single deal? A. Yes.

Q. But you had—most of the other deals were much smaller?

A. Yes, average down in the West Fork area of upwards of eighty million feet. Our average was \$7.89 a thousand stumpage.

Q. Yes, but what was the total deal?

A. Altogether?

Q. No, each separate tract that you purchased, did that run about a hundred thousand or a hundred and fifty thousand?

A. I think there was one that was right close to a hundred thousand.

Q. What type of cruise did you have on that tract?

A. A lot of them were county cruise.

Q. Didn't you have your own cruiser go out?

A. Mr. Kenny went out and looked at them, yes.

Q. Did he make merely a reconnaissance cruise, or a much more careful cruise?

A. No, I would not say he made a careful cruise.

Q. He didn't? A. No.

The Court: The witness said he didn't make a careful cruise. [1356]

Mr. Jaureguy: He made a reconnaissance cruise?

The Witness: Yes.

The Court: Multnomah Plywood was not in the habit of hiring independent cruisers prior to the

(Testimony of Clyde A. Smith.)

time that they decided to make the purchase, these professional cruisers?

A. No, they never had up to the time.

Q. Now, as I understand it, just a couple days after the conference with Mr. Bledsoe, you terminated your relations with the timber buying department of Multnomah Plywood?

A. I would not say it was a couple days. It was soon after.

Q. When the Parkers were in Mr. Bledsoe's office, would you say that you had a firm contract with Mr. Parker except for having it written up and reduced to writing?

A. No, I would not say that we had a firm contract. I would say we were generally agreeable on it.

Q. And it would have to go back to the Board of Directors for final approval? A. Yes.

Q. Were any other cruises or investigations contemplated?

A. Our attorneys, before ever we would have made the deal, would have inspected the title, you know.

Mr. Jaureguy: I have got to have that louder. I didn't hear that.

The Witness: Well, I say——

Mr. Jaureguy: Your attorneys what? [1357]

The Witness: Previously on any of the other timber acquisitions that we had had, we would place it right in the hands of the attorneys, and they drew

(Testimony of Clyde A. Smith.)

up the contract and had the title searched and seen that everything was all right.

The Court: Mr. Smith, I was not concerned about the title. I was concerned about the amount of timber on the tract, and my question was, did you contemplate at the time you were in Mr. Bledsoe's office to have another investigation made of the quantity and quality of timber on the Lost Lake area?

A. Personally, no. If the company had asked for it, that would have been—we probably would have.

Q. From your experience in the past, you do not think that that would have been necessary, or the company would not have called for an additional survey?

A. I don't feel that that would have. They may have. I don't think that they would.

Q. Now, what did you do after you left the timber division of Multnomah Plywood?

A. I worked in the plant.

Q. Doing what? A. On a sander.

Q. How much experience had you had in timber buying prior to the time that you went to Multnomah Plywood?

A. I had had some experience with Peninsula Plywood.

Q. Is that another co-op? [1358]

A. Yes.

Q. Your whole experience in cruising had been with cooperative organizations?

(Testimony of Clyde A. Smith.)

A. Well, I had worked in timber and logged for several years.

Q. How long were you in the woods before you went with Peninsula? A. About ten years.

Q. What did you do?

A. I have done everything from work on the section to run a load crane.

Q. Did you scale?

A. I had scaled. I scaled with Clemon's Logging Company.

Q. How long did you work on the sander after August, 1951? A. Until the first of May.

Q. Of 1952? A. Yes.

Q. Then did you leave the company at that time?

A. Yes.

Q. And are you in the timber business now?

A. No, I am unemployed now. I am not in any business.

Q. How long have you been unemployed? Since May of last year? A. Yes.

Q. You have not taken any other employment?

A. No, no; I have not.

Q. You have been here from the inception of this case? [1359] A. Yes.

Q. Are you friendly to Mr. and Mrs. Parker now? A. We are acquainted, yes.

Q. Are you social friends?

A. Not socially, no.

Q. You were not, at the time you were a timber buyer, but I was just wanting to know whether

(Testimony of Clyde A. Smith.)

you have been close personal friends since that time?

A. I would not say close personal friends, no.

Q. Multnomah Plywood, in making purchases, even though in excess of \$100,000 would rely on your judgment and the judgment of Mr. Kenny?

A. Right.

Q. As to technical information?

A. Yes, they had.

The Court: Are there any other questions?

Cross-Examination

By Mr. Krause:

Q. Could I just have the date on which you went up to look at the land yourself, or the timber?

A. It was August 22nd.

Q. Your directors' meeting was on the 20th?

A. Yes.

Q. You were going up that week?

A. Yes. [1360]

Q. So the 20th was Monday, the 22nd—that's all, your Honor.

Recross-Examination

By Mr. Buell:

Q. Mr. Smith, as soon as Mr. Johnson got back from out of town, why, this deal fell through, didn't it?

A. No, no, I would not say that it did. It was probably a week.

(Testimony of Clyde A. Smith.)

Q. You did know that the company decided not to buy the timber? A. You say I did know?

Q. Yes. A. How soon——

Q. Or, you do know?

A. I do know now, yes. I have known it.

Q. Didn't you know about it at the time?

A. I have known of it for some time.

Q. You learned about it shortly after the company decided not to buy, didn't you? A. Yes.

Mr. Buell: Nothing further.

Mr. Jaureguy: That is all.

The Court: That is all.

Mr. Jaureguy: I might ask you this question on the Bear Creek. Do you know whether the timber that, and there was a little over a half a million feet or more than the reconnaissance cruise?

A. We just took out the old growth. We were merely going to [1361] take out the old growth on that, and there was little over a half a million feet taken out in 1951, and there was supposed to be a million and a half feet, and it looked very likely that we would get better than two million feet out of it the way the logs started out.

Q. That is, it looked as though it would overrun the cruise about a third, then? A. Yes.

Mr. Jaureguy: That is all.

(Witness excused.)

The Court: We will adjourn until ten o'clock tomorrow morning.

.(Evening recess taken.) [1362]

Friday, Feb. 6, 1953, 10:00 A.M.

(Trial resumed.)

The Court: Mr. Jaureguy, you may proceed.

Mr. Jaureguy: Yes, I may say, your Honor, that I have received a communication from the First National Bank of McMinnville with respect to the safety deposit box, which I now hand to Mr. Strayer.

The Court: Is there any objection to having that admitted in evidence without having Mr. Wortman called back?

Mr. Jaureguy: No objection whatever.

The Court: Do you want to offer it, Mr. Strayer, now?

Mr. Strayer: May we have a chance to look it over, your Honor? We will offer it later.

The Court: Very well.

Mr. Jaureguy: I am looking for an exhibit. I do not see it at hand. It is the cruise of Roy Kenny.

The Court: Yesterday they referred to it.

Mr. Jaureguy: Yes, they referred to it, and my recollection is that I kept it.

Mr. Lindsay: 116 is the number.

The Court: Mr. Lindsay, do you have an extra copy of it?

Mr. Lindsay: I have a copy of it, but not the one with the map on it. [1363]

The Court: Does anyone else here have a copy with the map attached to it?

Mr. Strayer: What was that exhibit number?

Mr. Jaureguy: 116. I have it, your Honor. [1364]

ROY KENNY

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Roy Kenny? A. Yes.

Q. Where do you live, Mr. Kenny?

A. At Eugene.

Q. You have lived there about how long?

A. Since 1940.

Q. What is your business or occupation?

A. It is Forest Engineer.

Q. Will you tell us what your training and experience has been as a Forest Engineer?

A. Well it is practically 25 years.

Q. What does the occupation of Forest Engineer entail?

A. Well, it entails the cruising of timber and the laying out of roads and the planning of operations in connection with timber.

Q. As a Forest Engineer, have you been operating independently or as an officer or official or employee of a company? A. Independently.

Q. Independently; and during your period of time as—during this period of time, have you ever been retained by the Multnomah [1365] Plywood Corporation? A. Yes.

Q. Over what period of time?

A. Over about a year and a half.

(Testimony of Roy Kenny.)

Q. When was that?

A. It was in 1951, up until December of 1952.

Q. During that period of time, what did you do for them?

A. Well, I did cruising, and I did road lay-out, engineering, just whatever happened to be necessary.

Q. Did you cruise any timber that was sold by Chet Parker, the defendant in this case, to the Multnomah Plywood Corporation?

A. No, I didn't do any actual cruising of the timber that was sold by Mr. Parker.

Q. What about the timber referred to in this case as Bear Creek timber?

A. Well, that was just a cruise of mine down there, a looking at the timber and accepting the cruise that was already made on it.

Q. Now, do you recall in August of 1951 a cruise of timber up at Lost Lake? A. Yes.

Q. Who requested you to make that cruise?

A. Mr. Smith at Multnomah Plywood at that time.

Q. I hand you here the Exhibit 116, and ask you if that is the cruise that you made? [1366]

A. Yes, that is a copy of the cruise. That is—the original is in Multnomah's files.

Q. Did you deliver that to the directors of the Multnomah Plywood Corporation? A. Yes.

Q. Did you furnish any other information to the directors that would enable them to pass judgment on whether they would buy this timber?

(Testimony of Roy Kenny.)

A. Well, now, that is just a rather hard question to answer. I approved the purchase of it, yes.

Q. You approved the purchase at what price?

A. I didn't remember the price at this time. It was——

Q. Would you say \$180,000?

A. I think it was somewhere around there, yes.

Q. Did you investigate the, make any investigation of the values of timber in that district to reach that conclusion?

A. Yes, I did.

Q. What investigation did you make?

A. I remember sending in—they made a Government sale in there about—the Government sale was coming up about 30 days later in there in that same area. I remember sending that in to the office as a basis of the figure of what the timber was to be worth.

Q. Sent in what if the sale was coming later?

A. Yes. [1367]

Q. What did you send him?

A. Well, I had bid on it, because that is the approved practice by the Government. The bid price, it is according to how the bidders bid the price up.

Q. Do you recall what the approved price was?

A. The approved price was somewhere around \$30.

Q. \$30 a thousand? A. Yes.

Q. How did that timber on the tract which you cruised compare with the timber on the Government tract on that Government price of approximately \$30 a thousand?

(Testimony of Roy Kenny.)

A. It is the same thing, only there is more white pine and larch, which is higher value than straight hemlock.

Q. The cruise which you made, was that known as a reconnaissance cruise? A. That is right.

Q. What is that?

A. What we call a double-run cruise. We go through each forty twice, 20% cruise. You work through each forty four times.

Q. Well, now, would you say that—what would you say about your conclusions there as to the number of feet? Would you say that is right, or is it high or low, or what?

A. It is conservative. We always try to figure to cruise timber so that it will cover that much and possibly more.

Q. So that would you say that the figures you give there—that [1368] the amount of timber there is equal to or more than the figures you gave there?

A. The amount of timber I have given is fair, what is on the ground. It would all depend on how it was logged. They might recover a good deal more timber than this, but they should not have any loss.

Q. You say you approved the sale?

A. Yes.

Q. Was that approval written or was it just oral communication?

A. No, that was just oral with Mr. Johnson, the president of Multnomah Corporation.

Q. Do you know how long that was after you made your cruise?

(Testimony of Roy Kenny.)

A. Well, I believe it was the next day.

Q. The next day?

A. I came back through Portland.

Q. At any rate, do you recall talking to Mr. Johnson and telling him that you approved the sale at the price they were considering paying?

A. That is right.

Q. Might it have been later than that? I don't know that the price was determined by the next day.

A. Well, the only thing I have in mind is that I returned to Eugene immediately after making this cruise, that is, the next day, and was at Multnomah's office on my return.

Q. And discussed the timber with them? [1369]

A. I would have to check my records to see if it was the next day or not.

Q. You recall that you discussed the timber with Mr. Johnson? A. Yes.

Q. But you do not recall the price?

A. I do not recall the price, no.

Q. What would you say as to whether the timber there is worth \$180,000 to the Multnomah Plywood Corporation?

A. Well, that is a fair price, I think. It might be a good deal more than that if there was bidding in there. There are several large operators in there and if they should start bidding that price up—timber like this has been bid up over \$50 a thousand within the last year.

Q. Well, at the price of \$30 a thousand, if the amount of timber there is no more than your cruise,

(Testimony of Roy Kenny.)

would you say it would have been worth \$180,000 to the Multnomah Plywood Corporation?

A. Yes, it could have been. It could have been run up to \$200,000. There is practically a little over 4,000,000 feet here.

Mr. Jaureguy: You may take the witness.

Mr. Ryan: I have no questions.

Cross-Examination

By Mr. Krause:

Q. Does that location of the timber have anything to do with the stumpage value?

A. Yes, it does. [1370]

Q. When you say that some of it has been run up to \$50,000, did you have in mind the cost of getting the timber out to water?

A. \$50 a thousand.

Q. Yes, \$50 a thousand. A. Yes.

Q. Did you have in mind the cost of getting this timber out to the Columbia River?

A. That is right.

Q. How much did you figure that cost would be?

Mr. Jaureguy: Pardon the interruption. I do not think, I do not recall the witness testified that he thought it was worth fifty. He said that others had paid fifty for similar timber.

Mr. Krause: He said similar timber had sold at \$50 a thousand. I want to know whether it is in the same location.

Mr. Jaureguy: That is all right, then.

(Testimony of Roy Kenny.)

Mr. Krause: That is all I am inquiring about.

Mr. Jaureguy: But I don't think your question was at all relevant to his testimony, whether he had in mind transportation when he says others paid fifty.

Mr. Krause: Well, Mr. Kenny, isn't it important, the cost of getting timber out, in considering what you are going to pay for stumpage?

A. And also the quality of the timber.

Q. Well, yes, but certainly the cost, this particular item of getting it to water is very important, isn't it, or getting it [1371] to the mill?

A. Or the railhead.

Q. Or the railhead? A. Yes.

Q. Therefore, when you were considering this timber up there, you had to have in mind the cost of getting it down to the Columbia River, didn't you?

A. Or the railroad at Dee, there.

Q. Is there a railroad at Dee where you could load logs? A. Yes.

Q. What did you have in mind as to the cost of getting it down either to the railhead at Dee or to the river?

A. Well, those figures would be a valuation of what it would cost in other areas. I don't know as I made any special actual figures or what the logging would be, what the trucking would be, or what the transportation would be.

Q. How could you place a value on stumpage without checking into, taking into account the cost

(Testimony of Roy Kenny.)

of getting it to the place where you were going to use the logs?

A. I have a general idea of what the cost would be.

Q. A general idea is enough in order to determine what a person would pay for stumpage?

A. That is right, yes.

Q. What figure did you have in mind as the cost of logging, transportation, getting the timber down to where it was to be used? [1372]

A. It should not be over \$30.

Q. Not over \$30. Well, when you say that similar timber has sold for \$50, was that paid for timber where the cost of getting it to the mill would be \$30 additional per thousand?

A. Yes, and sometimes more.

Q. So the average price of \$80 per thousand for this type of timber at the mill at that time in August, 1951, was not improper?

A. No, the timber was \$110 or \$115.

Q. Well, that was for peeler logs, wasn't it, Mr. Kenny?

A. That is right.

Q. What was the percentage of peelers in this lot?

A. Well, this gives it as 60% peelers.

Q. That 60% is only on the million and a half of yellow fir, though, isn't it?

A. Yes, but your white pine and larch is another item that is just as high as the peelers.

Q. Just as good?

A. And possibly higher priced.

(Testimony of Roy Kenny.)

Q. But your larch and white pine, did you lump the white pine with the larch? A. Yes.

Q. You had about 50% peelers there, and then you still had a—there is only a quarter of a million of white pine, you see, and 370,000 of larch, but you had a million, seven hundred thousand of hemlock of which there were only 20% peelers, and you figured [1373] that you could run at a price of—that is, that you could come out with a price even though your price was not up to \$110 to get them to the mill?

A. That is right, it was my thought that that hemlock and pine could be traded to mills right in that area for fir peelers. Multnomah is only interested in fir peelers.

Q. Isn't that hemlock, to get it out up there, hemlock in that area and get it down to the mills where it can be used, don't you ordinarily consider that the cost of getting it out, plus the cost of the stumpage is just about going to offset each other so that there would be nothing—

A. No, the hemlock in that area is a different quality than this hemlock we have in the Columbia River. The majority of this hemlock in the Columbia River is pulp wood and it is a low price, and hemlock that grows on the higher elevations is a high quality hemlock that gives a value consistent with the fir or the pine. Those mills that cut that, they get as good percentage of clears out of that the same as they do out of fir, and where they have their dry kilns, they dry it and sell it at a high

(Testimony of Roy Kenny.)

price. It is not pulp wood, and that is what you are basing your value on here.

Q. But your price on one, two and three hemlock kiln-dried lumber for framing houses and things of that sort does not run up to anywheres near \$110, does it, a thousand?

A. Your clears do. What clears and selects they would get out [1374] of it would.

Q. Well, the clears and selects would run \$110 a thousand? A. Yes.

Q. But what percentage of the logs would be clears and selects?

A. Well, that would be 25 to 30 per cent ordinarily in that hemlock.

Q. And the balance of it, the top price that you could get would be about what?

A. I don't know. I don't know what the selling price is.

Q. In August, 1951, is the time we are talking about. A. What is that?

Q. In August, 1951, is the time we are talking about.

A. Well, I had better go back for my files and find out what the prices were at that time. I don't know whether they are as high as they are today or not. The fact of the matter, the selling price of lumber is not my line.

Q. You do not have to know the selling price of lumber in order to determine value of stumpage?

A. I know what the price of logs are. Those logs can be traded.

(Testimony of Roy Kenny.)

Q. What about cedar logs? There was a million and a half of them—pardon me—no, there is 360,000 of cedar on your cruise. What were they worth, do you know, on the Columbia River?

A. Oh, somewhere around forty-five to fifty dollars.

Q. And your stumpage at \$30 and cost of getting it out at \$30 would make that cost you around \$15 a thousand after getting them [1375] out. You have only been figuring the stumpage, though, here, at about \$30 a thousand. Actually, on the basis of \$180,000, your stumpage was around \$45 a thousand; isn't that correct, Mr. Kenny?

A. Well, I say it depends on how they logged that. They might log a million or a million and a half more than I have on there.

Q. Well, do people buy timber on the chance that there is going to be a million and a half more than the cruise shows? A. That is right.

Q. They do?

A. And they also buy and pay higher prices for peelers that have to substitute for lower grades. It is the condition of the market.

Q. On the basis of your cruise, the stumpage was going to cost Multnomah Plywood about \$45 a thousand at \$180,000 for the whole deal; isn't that right?

A. Yes.

Q. So you were coming awfully close to that top price of \$50 for stumpage. The location of this timber was—strike that, that is all.

(Testimony of Roy Kenny.)

Cross-Examination

By Mr. Buell:

Q. Mr. Kenny, would you say that \$34 a thousand would be a poor average stumpage price for the fir and timber on those tracts?

A. \$34? [1376]

Q. Yes.

A. That would be a fair price. It would not be too high.

Q. How about, I believe in answer to one of Mr. Krause's questions you indicated that somewhere around \$14 or \$15 would be a fair price for the western red cedar that is on the property.

A. Well, there is such a small quantity of it that you really do not pay very much attention to the value of the cedar.

Q. Wouldn't that be about right?

A. It would bring, those logs would bring forty or fifty dollars on the market here.

Q. Allowing your \$30 per thousand to get them to the river, why, you could not afford to pay much more for \$15 for them stumpage?

A. That would all depend on whether they decided to leave them in the woods or log.

Q. Well, placing the maximum on the cedar, you say that fifteen would be the top you could pay for it?

A. Well, as I remember that cedar, it was—it is saw or shingle mill type, or that large, they are better than the average small cedar. It might be possible

(Testimony of Roy Kenny.)

if that was taken to a saw mill to get some a little up there in the upper grades of \$100 even. It would average maybe from \$35 on the low-grade to \$100 on the upper grades.

Q. Well, considering the stumpage price alone, the average stumpage price for the cedar on that property, you couldn't afford to pay much more than \$15 on it, could you, for stumpage [1377] on the cedar?

A. Well, it doesn't amount to anything. It is only 368,000 feet.

Q. Perhaps my question is not clear.

A. Well, those are hard things to understand today. On most of these Government sales, they put a price on the hemlock and cedar of from eight to fifteen dollars, and the operators very rarely even took it out of the woods because it just does not have the value, some of the incense cedar, but this is a higher quality western red cedar, the same as the hemlock is a better quality in that higher elevation up there than the lowlands.

Q. Is it your opinion then that the cedar would be worth less than \$15 a thousand stumpage?

A. No, it is not.

Q. Well, is that about a fair price for that cedar?

A. What are you trying to prove?

Q. Well, it is not a question of trying to prove. I am asking you what you feel was the reasonable market value that could be attributed to the cedar timber on that property at the time you inspected it?

A. Well, I figured the logs would be about \$50

(Testimony of Roy Kenny.)

and it would carry itself for what little amount there was.

The Court: \$50 a thousand?

The Witness: Yes.

Mr. Jaureguy: He is not talking about stumpage; logs. [1378]

Q. (By Mr. Buell): That is in the river?

A. That is the price for shingle cedar logs.

Q. In the river, in the river?

A. That is right; in the Portland market here.

Q. Well, then, what did you consider would be the fair average value of the hemlock on that property, the fair average stumpage value of that hemlock?

A. Well, we had in mind that that hemlock would be traded right in that area, and that would be somewhere around, possibly, forty or fifty logs.

Q. Also in the river?

A. No, right at the saw mills near the timber.

Q. What was the closest saw mill to the timber?

A. Well, I don't know. It would be about 20 miles, 15 or 16 miles, something under 20 miles.

Q. How much shorter haul is that from, than hauling it all the way down and dumping it in the river?

A. It is about half.

Q. Well, your logging cost of getting the hemlock to the mills in the area would run around \$27, wouldn't it?

A. How do you mean, the total delivered at the mill?

Q. To go back a minute, I believe you stated

(Testimony of Roy Kenny.)

that you felt your logging cost of getting the timber out of the woods and into the river would be about \$30 per thousand. You would not save any more than about \$3 per thousand on bringing it to the hemlock mills [1379] that were within 18 or 20 miles of where the timber was located, would you?

A. Well, yes, you might get back that \$25, take it off the costs you would have to put it in the water and raft it than if you just dumped it in the mill pond. You would arrive at maybe a \$25 mill price, and the \$15 stumpage price would bring you about your \$40.

Q. So you would just about break even on the hemlock, also, as well as the cedar?

A. That is right.

Q. Now, was it your opinion that all of this Noble fir and white fir and white pine was of sufficient quality to warrant taking it down to the river and on down to Portland?

A. Yes, but it would have been more logical to market it right there in the area, manufacture it there.

Q. That would be all of the pine and Noble fir and white fir? A. Right.

Q. It would be more practicable to attempt to market it in the area?

A. To manufacture it there.

Q. Incidentally, we were not able to establish yesterday—maybe you could help us—approximately what would be the cost of towing from boom in the

(Testimony of Roy Kenny.)

river at Hood River down to Portland per thousand? Would you have any idea of that as of the time you were looking at this property? [1380]

A. I think it was somewhere around \$2 a thousand.

Q. That would be delivered at the plywood mill on the river here? A. That is right.

Q. Now, going to the cruise itself, about how much time did you spend on the property, Mr. Kenny?

A. About 7 hours, as I remember it, between 6 and 7 hours.

Q. That was for the two-run cruise, which is a 10% cruise, isn't it?

A. Yes, it is 15 to 20 per cent cruise. I do that reconnaissance cruise a little different than the ordinary because I do it on the round acre count. It is practically the same as the 20% cruise. It would be fifteen to twenty per cent.

Q. Now, I noticed in your cruise report here, there was no reference to any cull trees. Isn't it the general practice in cruising timber to list the defective or cull trees which you have culled out from your cruise? A. Not unless it is requested.

Q. Do you have any record of the number of cull trees that you found in your cruise?

A. I think I could find that. It would possibly run twenty-five or thirty per cent of the defective trees.

Q. Are you quite sure that the defective trees are

(Testimony of Roy Kenny.)

not included within your total stumpage figures here?

A. They never are included in [1381] merchantable.

Q. They are not included. Where did you find the defect to—or in what timber here did you find the principal amount of defects?

A. In the fir. It is almost always in the yellow fir, overmatured timber.

Q. Didn't you find quite a considerable amount of defects in the hemlock, too?

A. Well, you might find some stump-rot in the hemlock, but that is figured in the cruising, and you have a tree—you deduct so much for that rot that may be in the stump of the hemlock.

Q. Wasn't there quite a bit of top breakage in the hemlock?

A. That is generally figured in at 10% for breakage as the cruiser's figures.

Q. Also quite a bit of snow breakage and wind snag in the hemlock?

A. No.

Q. Mr. Kenny, going back a minute to the prices on these timbers, what did you figure to be the average price that you could get for the white fir, Noble fir, and white pine? I believe you testified that they would have been most practicable to attempt to dispose of that to the mills in the area?

A. Well, that would bring, I figure, an average of around \$50 to \$60 in trading.

Q. Per thousand, on the average?

A. Yes. [1382]

(Testimony of Roy Kenny.)

The Court: There is one question I would like to ask.

Examination

By the Court:

Q. In making your estimate of volume, how many acres did you examine? I mean, how many did you consider?

A. There were two tracts. There was a 40-acre tract, and then there was another tract.

Q. How large was that other tract, and do you consider all of the timber on that tract?

A. I was trying to check that. I think that there was 28 acres reserved in there.

Q. Well, there was 25.88 acres. I believe that is the size of that small tract.

A. I have it on here as 28, but it is close enough, something around there.

Q. Did you estimate the value on that entire 25.88 acres?

A. No, that was deducted from there. It is really—it is about 67 acres.

Q. All together, you figured it would be about 67 acres? A. Yes.

Q. In that smaller tract, did you exclude certain portions?

A. I excluded the whole tract that was reserved and that was not to be logged.

Mr. Jaureguy: Might I—

The Court: Yes, will you clear that up? [1383]

(Testimony of Roy Kenny.)

Redirect Examination

By Mr. Jaureguy:

Q. I think that the witness' map there shows some misapprehension on the part of the witness, on the part of Mr. Kenny, in making that cruise, because he has this Lot No. 1 much larger than it admittedly is. Now, I don't know how he made that. I was going to ask him about that, but I overlooked it.

The Court: All right, you go ahead.

Q. (By Mr. Jaureguy): Now, there are two tracts here. One is the 40-acre tract. A. Yes.

Q. The northeast of the northwest quarter, and then next to it is a tract which is bounded on the east by Lost Lake? A. Yes.

Q. And is bounded on the west by the 40-acre tract? A. Yes.

Q. Now, you have that, that tract there on your map about, oh, 35 or 40 acres, don't you? It is just as plain as can be on your map.

A. Well, as I remember it, this is the point that we started from, and measured out to this corner of fifteen, and each one of those would be 330 feet. That would be 990 feet from here to there, and then we checked this—we left this little piece here and then took out that——

Q. Where did you learn about that reserve? Were did you get that? [1384]

A. That was at the time it was told to me that that was not to be cruised.

(Testimony of Roy Kenny.)

Q. Who told you that? A. Mr. Stegmann.

Q. Now, just if I could show him the other map, or some of the other maps that we have, because, as you will recall, your Honor, it is admitted that that lot is about 25.88.

The Court: That is right, and I was wondering what the property looked like.

Q. (By Mr. Jaureguy): In the reserved area, you have about 40 acres there, don't you?

A. Well——

The Court: The witness testified he had about 28 acres.

The Witness: With the reserved area, there would be about 38 acres, so this would fill in here, you see, so there would be only about two and a half acres out of this forty, if this was all there was (indicating).

Q. How much did you have in reserve?

A. This much here (indicating).

Q. That is what I say, you have about 40 acres before you take out that reserved area?

A. That is right.

Q. Instead of 25, and then you take out 28 acres as the reserved area, so 28 from 40 leaves——

A. Well, then, there was a misunderstanding, because—— [1385]

Q. ——leaves only 12?

A. Because that corner here was given to me as being on the property which would make this extended the——extended to the lake frontage clear over here, which would be 70—77½ or 78 acres in there.

(Testimony of Roy Kenny.)

Q. Did you see that on the ground, or did you take that from the Metsker map, or something?

A. No, we saw that on the ground. We ran over to the lake here, but this was not marked. There was a 16th post set there, as I remember it.

Q. Oh, so that was excluded there?

A. Yes.

Q. So that when you take out 28 from 40, that leaves about 12, doesn't it?

A. Yes, but we put in another five acres here that is over in this piece; was supposed to be on that property, also.

Q. That leaves 17, then?

A. So that if you take $7\frac{1}{2}$ from, as I have it here, about $18\frac{1}{2}$, would be $22\frac{1}{2}$, then $2\frac{1}{2}$, or just three acres total.

Q. $22\frac{1}{2}$. Then that is a little more than the other, but I still do not understand how that map should be different.

The Court: You figure that the timber that you were to appraise was on land covering about $62\frac{1}{2}$ acres?

The Witness: That is right.

Mr. Jaureguy: Yes, that is all I wanted to get, that [1386] discrepancy, but I neglected to point out that, or even question the witness about it, before we put him on the stand.

The Court: Go ahead, Mr. Buell.

(Testimony of Roy Kenny.)

Cross-Examination

(Continued)

By Mr. Buell:

Q. Mr. Kenny, Mr. Stegmann showed you all the, where the corners were on the property, and pointed out what the reserved area was to be; did he not?

A. Yes, we had the corners that—of course, we found them. I found and checked them through this witness corner here on the lake and the quarter corner over here, and this 16th corner down at the south of that forty.

Q. Then, your information as to what part of the property was going to be reserved by the sellers, came from Mr. Stegmann, too, didn't it?

A. That is right.

Q. Then you mentioned you had considered another timber sale in the area in arriving at your estimated price. Do you recall what sale that was?

A. I could find it in my files. It was a government sale from the Forest Service in that area.

Q. In the Mt. Hood National Forest?

A. Yes.

Q. Was that sale to take place after the time you were up there on the property?

A. Yes. [1387]

Q. Would that be the one to M & M Woodworking?

A. I don't know, I didn't keep track of it to see

(Testimony of Roy Kenny.)

who got that sale. How much later was that, thirty or sixty days?

Q. November 5, 1951.

A. That may have been. What area is that in that you refer to?

Q. Well, those were Townships 6 and 7, Range 6 East, Mt. Hood National Forest.

The Court: How big a tract was that?

Mr. Buell: I beg your pardon?

The Court: How big a tract was that?

Mr. Buell: 360 acres.

Q. Was that the one, or could you be sure?

A. Well, that is farther south and farther west.

Q. Where was the property that you had in mind located?

A. It was in this same—I think it was in 1 South and 7 East or 2—1 or 2 and 7 East. This was right within 25 miles, anyhow.

Q. How many acres were involved in it?

A. I don't know. I would have to check that up. I just mailed it in to Mr. Johnson to check.

Q. Was that the one to Columbia Veneer?

A. I say, I don't know. I didn't follow it up to see who——

Q. About 54 acres. Do you recall what the price was that was actually bid on the property?

A. No, I say I did not follow it up. All I did was pick the [1388] notice of a sale coming up.

Q. Well, we have a record here of a sale of 54 acres to Columbia Veneer out of Mt. Hood National Forest.

(Testimony of Roy Kenny.)

Mr. Jaureguy: I want to object to reading to the witness when the witness says he did not follow it up. It is just putting something in the record by reading what he has got in his hand.

Mr. Buell: It is already in evidence.

Mr. Jaureguy: Oh, it is, I did not see that.

The Court: But the witness has testified that he only saw the government appraisal and he didn't follow it up. He says he does not know to whom it was sold or at what price.

The Witness: That is right. It was a notice of a sale to come.

Q. (By Mr. Buell): What was the government appraisal on that? A. I don't remember.

Q. You don't remember. Do you have your records with you?

A. No, I do not have them with me.

Q. What would you have to do to find that out?

A. I would have to go to Eugene and hunt up my records and mail it in here.

The Court: I thought you testified that you sent that information to Mr. Johnson at Multnomah Plywood?

The Witness: It might be possible they would find it in their records down there.

The Court: Any other questions of this [1389] witness?

Mr. Buell: No further questions.

The Court: Mr. Jaureguy?

(Testimony of Roy Kenny.)

Redirect Examination

By Mr. Jaureguy:

Q. I thought in answer to a question by Mr. Buell, you said that they thought that they would break even on the hemlock. Did you mean to say that they would not get anything for the hemlock?

A. Well, they would get the cost of it, yes.

Q. You said the hemlock up here was much different than the other hemlock in the Columbia River area, and as good as the Douglas fir, I thought you said.

A. Not as good as the Douglas fir, but could be traded for Douglas fir. At that time, Multnomah was not interested in hemlock, only as a means of trading for fir.

Mr. Jaureguy: That is all.

We offer that cruise in evidence. 116, I think it is.

Mr. Buell: I wonder if Mr. Kenny could send up that record of that sale that he had in mind.

The Court: If you could find it, Mr. Kenny?

The Witness: I will try to find it, if Multnomah will let me have it out of their files.

Mr. Jaureguy: I do not think Mr. Buell is asking you to get it out of the files of Multnomah.

Mr. Buell: Wherever he can get it.

Mr. Jaureguy: Wherever he can get it? All right, go down and [1390] try to get it.

The Witness: Yes, I will try to find it.

The Court: Then send it to Mr. Jaureguy.

The Witness: All right.

(Witness excused.) [1391]

CHET L. PARKER

recalled in his own behalf, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Mr. Parker, I am handing you Exhibit 303. I want you to look at that and ask if you have ever seen that before this trial started?

A. Yes, I have seen it.

Q. Do you know where it came from?

A. Yes.

Q. How did it happen to be prepared?

A. Well, Mr. Stegmann had some notes, and I took them in to an engineer's office and had him draw this map from those notes.

Q. That is, you took some of the notes that Mr. Stegmann gave you? A. Yes.

Q. And took them to an engineer's office and had this map made? A. Yes.

Q. Do you remember when that was?

A. September—or August 29th or 24th, somewhere in there.

Q. Well, now, did you pay for that map by check the day you got it? A. Yes.

Q. Then what did you do with the map, I mean with Exhibit 303?

A. I looked it over and gave it back to Mr. Stegmann. [1392]

Q. Was that on or about the day that you have testified you got it, August 29th? A. Yes.

(Testimony of Chet L. Parker.)

Q. Then did you see it again, later?

A. Yes.

Q. When was that?

A. I believe it was when we went up to survey.

Mr. Stegmann and Mr. Winans and I went up on the property as set up on this reserved area.

Q. When was that? You testified to that before.

A. The 31st, I think it was.

Q. I beg your pardon?

A. I think it was the 30th or 31st.

Q. Well, I think you testified that it was the 31st of August.

A. That is what—yes, I think it was the 31st of August.

Q. You were up there, then. You have already testified to being up there, then.

A. Yes

Q. At that time, you testified, I think, about an argument you had with Mr. Winans about the reserved area?

A. Yes.

Q. Just tell us briefly about that argument?

A. Well, his idea and mine about the reserved area was not exactly the same.

Q. What was his? Now, by reference to the map which you have [1393] in your hand, Exhibit 303, what was his contention as to what the reserved area should be?

A. Well, what is marked off here (indicating). He wanted to keep the area that is marked here (indicating).

Mr. Strayer: What was that?

(Testimony of Chet L. Parker.)

The Witness: He wanted to keep the area that is marked off here (indicating).

Q. (By Mr. Jaureguy): Mark it off on Exhibit 303. What did you want?

A. Well, I didn't care how much of this area he got so long as I kept the timber on it, and I said, "Where some of these lots are, there is some timber on it." I didn't want him to have any of that.

Q. Was that a rather hot argument that you said you had with him? A. Yes.

Q. Then what else finally happened on the survey work that was being done that day? Who was doing that surveying work that day?

A. Well, Stegmann was doing the work. Everybody was working, but Stegmann was doing the surveying, and we agreed tentatively that I would get the timber land. As long as Stegmann could cut out the open land, he could go wherever he wanted to on land where the trees had no value, and that is what I considered trees of no value, of no consequence, but other than that I wanted all the timber on it, and that is what we did. [1394]

Q. Is that the reserved area that he surveyed off that day? Is that the reserved area that finally was put into the deed?

A. Well, I think it is, yes.

Q. Then did you have notes on that?

A. Yes, Stegmann gave me some notes on that.

Q. What did you do with that?

A. Well, I took it back and had another map drawn.

(Testimony of Chet L. Parker.)

Q. Did you take it to an engineer? Who was the engineer, by the way?

A. I do not remember his name.

Q. Mr. St. Louis, would you say?

A. Yes, possibly; American Bank Building, I believe it was.

Mr. Jaureguy: I am awfully sorry, your Honor, I had those checks——

The Court: It is eleven o'clock. We'll take a five-minute recess.

(Recess taken.)

Mr. Jaureguy: If your Honor please, I have two exhibits consisting of two checks that I didn't get until after the trial started. I showed them to Mr. Strayer immediately.

The Court: What is the number?

Mr. Jaureguy: I think it is 120.

(Check dated August 29, 1951, to General Drafting Service for \$12.00 marked Defendants' Exhibit 120 for identification.) [1395]

(Check dated 9-5- to General Drafting Service for \$18.00, marked Defendant's Exhibit 121 for identification.)

Mr. Jaureguy: I hand you Exhibit 120, and ask you if that is the check with which you paid for the drafting of Exhibit 303? A. Yes.

Mr. Krause: Is that 119 or 120?

Mr. Jaureguy: Oh, I beg your pardon. This is 120.

The Witness: Yes, 120.

(Testimony of Chet L. Parker.)

Q. (By Mr. Jaureguy): Is that the check with which you paid for the draftsmanship work on this exhibit? A. Yes.

Q. What is the date of that check?

A. Eighth month, twenty-ninth day of '51.

Q. What would you say about the day you got Exhibit 303?

A. Well, it would be on the day I paid for it.

Q. You got that on the same day? A. Yes.

Q. 29th day of August, 1951? A. Yes.

Q. I don't suppose you remember whether you went to the draftsman and got that first before you went to Lincoln Ferris, or is it the other way around? A. I don't remember. [1396]

Q. Then did you say that after you were up there on the 31st of August, aiding in the surveying work, that you got some more notes from Stegmann?

A. Yes.

Q. Did you deliver those notes to this General Drafting Service? A. Yes.

Q. Did they make another sketch or map?

A. Yes.

Q. Did you pick it up? A. Yes.

Q. I show you Exhibit 121 and ask you what that check was used for?

A. Well, this was to pay for the last map pertaining to this reserved area.

Q. That is the map that you got after you were up there on the 31st? A. Yes.

Q. And from the notes that were made at that time? A. Yes.

Q. What is the date of that check?

(Testimony of Chet L. Parker.)

A. Ninth month, fifth day of '51.

Q. Did you pick up the map at that time?

A. Yes.

Q. What did you do with that map? [1397]

A. Well, I believe I gave that to Stegmann, as I remember. It looked all right to me.

Q. As far as you know, is that reserved area, as set forth in the deed which you received, the same as the reserved areas shown on that map?

A. It must be very close. It looks that way.

Q. Have you seen the map since you gave it to Stegmann? A. No, I don't think so.

Q. Do you know where it is now?

A. No, I do not.

Mr. Jaureguy: We offer in evidence Exhibits 120 and 121.

The Court: Any objection?

Mr. Strayer: No objection.

Mr. Buell: No objection.

Mr. Krause: No objection.

Mr. Ryan: No objection.

The Court: It may be admitted.

(Checks previously marked Defendants' Exhibits 120 and 121 for identification were received in evidence.)

Mr. Buell: What were the amounts of those two?

Mr. Jaureguy: Number 120 was \$12.00 and 121 was \$18.00.

(Testimony of Chet L. Parker.)

Q. Now, there has been some mention here of your being an engineer and also some suggestion that you were a surveyor. Just give us a review of your training and experience and education [1398] that might have qualified you for either or both of those positions?

A. Well, I went through the ninth grade. I certainly was not the best student in the world, but neither was I the poorest. When I was overseas, I had quite a bit of—I gather quite a bit of mechanical knowledge, and when I came back, why, the government needed some—needed a man to help them on, oh, trucks and stuff like that, mechanics, so they had some fancy name of some engineer, and gave me it. I have forgot, it wasn't very much of a salary and I was there for a while, and that is the extent of my experience of being an engineer or anything of that light.

The Court: Mr. Jaureguy, I think that Mr. Parker, on his direct examination, explained all this, and the only evidence was that—all to the contrary, was that Mr. Stegmann had indicated that he had a friend who knew a little about surveying. There was no contention that Mr. Stegmann intended to bring up a professional surveyor or professional engineer.

As I recall it, Mr. Parker testified that he used the word "survey" in connection with making an appraisal, just the same as the insurance companies do when they value buildings and other things.

If you want to go into it, it is all right, but I

(Testimony of Chet L. Parker.)

know the facts. I remember that testimony very well.

Mr. Jaureguy: Just very briefly. Your Honor will recall I [1399] didn't take him on cross-examination on these points at all. I just went a little bit into some other points. That is my recollection. It will not take long, I can assure you.

The Court: All right. Go ahead.

Q. (By Mr. Jaureguy): What training, if any, or experience have you had in surveying?

A. I suppose you mean civil engineering? I suppose that is what they call it, like a county surveyor? Well, I have had none, whatsoever.

Q. Now, there are many checks here, according to the list, made to a Mr. Walker for surveying work.

A. Yes, I had Mr. Walker. He did all my surveying, surveying work of surveying lines, I think he did it all. There could have been other people, but he did an awful lot of it.

Q. Did you ever do any surveying?

A. No, I have never done any surveying.

Q. Did you ever advocate or suggest to anybody that the dam up there at Lost Lake should be dynamited?

A. No, I don't remember making such a statement.

Q. Was it ever your desire that that be done?

A. No, I think the dam is very nice.

Q. Now, did you hear the testimony of Mr. Par-

(Testimony of Chet L. Parker.)

rott and Mr. Petersen that you were up there at the Ranger Station on the evening of August 15th?

A. Yes, I heard that. [1400]

Q. Were you up there on August 15th? The 13th, it should be.

A. They said I was there, but I wasn't.

Q. How many times were you ever up at the Ranger Station during the months of August and September?

A. I don't think I was there either of those months.

Q. Were you up there at any other time?

A. I think after that I was there once.

Q. After what?

A. After September.

Q. What was the occasion of your going up there then?

A. Well, as I remember, it is not very clear in my mind, I had another fellow with me. I remember that. And it had to do with ownerships in the lower Columbia—or Hood River valley.

Q. On the 13th, where were you?

A. I was at Lost Lake.

Q. You were doing this—going over this property to determine whether you would take the option?

A. That is right.

The Court: Would you mind asking him more about that? That is an important point, I think.

Mr. Jaureguy: Yes, I do, too.

The Court: Find out what kind of a car he has and whether or not he dressed—

(Testimony of Chet L. Parker.)

Mr. Jaureguy: I was going to take up clothes.

Q. You recall the testimony about your [1401] clothes?

A. Well, I recall the one; it was forest green jacket and shirt and forester's hat. Yes, I remember that distinctly.

Q. I want to change my question, if I may. Do you recall testimony regarding clothes of the man that they identified as you? A. Yes.

Q. Well, now, what about the forest green jacket or shirt or coat?

A. I have never worn a forest green jacket, shirt, overalls or used a forester's hat. I have never owned one. I have never worn one in my life.

Q. You are talking about a forest green jacket and the forester's hat?

A. And pants and everything, I have never worn one in my life.

Q. What kind of clothes would you have had on that day?

A. I would have had a pair of overalls on.

Q. Regular blue overalls?

A. Yes, cheapest kind you can buy. They were probably staked off at the bottoms.

Q. That means——

A. It means you take a pocket knife, cut them off at the bottom so you won't trip in the brush or catch them. I am very doubtful that I had a coat on, being the time of the year it is, but I could have had a coat on.

(Testimony of Chet L. Parker.)

Q. If you had a coat on, would it have been forest green?

A. It would not have been forest green, and if I had a hat on, [1402] it would have to have been a tin hat. Now, I mean tin hat, when I was a boy we referred to tin hats, these canvas hats, not what you call a plain hat now.

Q. Are you referring to heavy canvas, water-proof hats? A. That is right.

Q. What color are they?

A. Well, by then it loses its color. It would not have one. It looks like a wreck.

Q. Those were the clothes you had on that day?

A. Well, I am not sure that I had those clothes on, and if I had a hat on, that is the hat I would have worn, and I certainly did not have any clothes on of forest green at any time.

The Court: What color is forest green?

The Witness: Well, like these foresters wear forest green like a fir tree, I would say would be forest green.

The Court: Did you have a coat of the same type of material as the hat?

The Witness: No, I don't know whether I had a coat on, but I had some jackets, some old jackets. Oh, I got some blue ones. I don't know whether I had it on or not, black and white plaid.

The Court: What kind of a car were you driving that day?

The Witness: I don't remember, sir.

(Testimony of Chet L. Parker.)

The Court: Do you have a late-model car, two-door sedan?

The Witness: No, I do not.

The Court: Did you have one at that [1403] time?

The Witness: No, I did not.

The Court: Did you have a car with a Washington license on it?

The Witness: That I might have.

Q. (By Mr. Jaureguay): That is, did you own one with a Washington license at that time?

A. I might have, but I am not sure.

The Court: Will you tell us what the license number was, of the Washington license?

The Witness: I don't remember, I never did know.

The Court: Did that start out with a letter "G"?

The Witness: Well, I live in Clark County. I don't know whether that is a "G" or "C."

Mr. Jaureguay: Clark County is a "G."

The Witness: It looks like a "C," but it could be a "G," I guess.

Mr. Jaureguay: One reason I say it is a "G" is that the Exhibit, at the time it was introduced yesterday, showed that he had a license number starting with "G," but in Washington they have the different portions of the State have different letters.

The Witness: I think that is the way it is, yes. I think my county has a letter, but I am not sure of that.

Q. (By Mr. Jaureguay): When did you first

(Testimony of Chet L. Parker.)

learn that there was any question about the title to this property? [1404]

A. Well, sometime during the meetings of Title and Trust.

Q. Well, what about when Miller told you?

A. Well, yes—well, he seemed to be a little bit—knew there was a question, but he didn't say much about it. He didn't seem to be too perturbed about it.

Q. So, it was sometime after that that you learned?

A. Well, yes, and Gene Marsh told me it didn't amount to anything, so I——

Q. When did you first learn that the Winans knew there was a question about the title?

A. Well, when I saw some correspondence that Title and Trust showed me.

Q. Were you surprised when you saw them?

A. Extremely so.

Q. That was the first time you knew that the Winans had knowledge of the——

A. Well, absolutely, and in view of this letter, yes.

Q. What do you mean "this letter"? A letter that was in the correspondence? A. Yes.

Q. Are you speaking of correspondence between Winans and the Pacific Abstract & Title Company, when the settlement was made in 1943 and 1944?

A. Well, some letter that the Winans had wrote in to some title company. I thought it was Title and

(Testimony of Chet L. Parker.)

Trust Company, but I presume [1405] now it was some other company.

Q. Well, I don't know what the significance of this other matter is, but I am going to have him explain it anyway. They went into it. Do you remember the testimony with respect to the White truck that Mr. Ellis testified to? A. Yes.

Q. Did you eventually get that truck?

A. Yes.

Q. How did you get it?

A. I bought it and paid for it from Mr. Heider.

Q. And all this other testimony—well, then you had a suit brought that is in evidence here, in order to get possession of it? A. Yes.

Mr. Jaureguy: I have this check. This is the same situation as the other two.

(Check dated July 20, 1950, to Otto Heider for \$1,210, marked Defendant's Exhibit 122 for identification.)

Q. (By Mr. Jaureguy): Of course, you didn't sign this check. Your wife signed it, but can you tell us whether that is the check which you used to purchase that White truck from Otto Heider?

A. Yes, White truck and trailer.

Q. Then were they subject to a mortgage at the time? [1406] A. No.

Q. You think that is it?

A. No, that paid for it. Otto Heider was Ellis' attorney, as I remember, at the time, but I am not sure about that, however.

(Testimony of Chet L. Parker.)

Mr. Jaureguy: We offer in evidence this Exhibit 122.

Mr. Strayer: No objections.

The Court: No objection? What is the check for, in what amount?

Mr. Krause: \$1,210, '46 White truck; '46 Walker trailer, signed by Lois Parker.

The Court: Any objection?

Mr. Ryan: I have no objection.

The Court: It may be admitted.

(Check previously marked Defendant's Exhibit 122 for identification was received in evidence.)

Q. (By Mr. Jaureguy): I do not know whether you fully explained this Jeep business with Tilbury's concern or not, I mean, your portion of it. Just tell us whether you went in there and wanted to know whether a certain—what it would cost if you turned in your Jeep?

A. Well, it would take me just a minute or two to give a pretty clear picture of it.

I had a 1948 Jeep. They had a 1949 Jeep. Neither one of them were new. I wanted to clear that item up to start in with, and they were going to allow me \$800 for my Jeep, as I remember, [1407] on the other Jeep. That was not too interesting to me, how much they was going to allow me. The interesting part to me was how much they was going to charge me difference that I had to pay. As I remember, when we left there it was going to be

(Testimony of Chet L. Parker.)

five hundred bucks, and I know these people very well to start in with. For 15 years I went to school in that town, and I have known them all my life practically. My brother worked there for 20 or 25 years.

Q. Worked in the town, or worked for them?

A. Worked right there for these same people, and, confidentially, when I go in there we do a lot of bargaining. I bought a lot of pick-ups from them, a lot of cars from them, a lot of parts. I don't know, I would guess, probably forty to fifty thousand dollars worth, and whenever I went in there to buy anything, why, we did a lot of bargaining. Sometimes it would take a month to do a car deal or something, off and on, a half hour at a time when I might be in there, but I came back, and we arrived at a deal, \$450, and normally between models, on used models, \$500 would be a big price. Now, if that would have been a new one I was trading for, then \$500 would have been a very nominal price, I consider, but since both of them were used and mine was in good shape as the one I was getting, and they was only a year later, I figured \$500 was a little strong. I paid them for it. I picked up the Jeep and I sold the same Jeep that I got from them for \$800 a year later. [1408]

Q. There has been some testimony from Parman. Can you——

A. That name was new to me until he come in here.

Q. That witness testified that he called you by

(Testimony of Chet L. Parker.)

phone and made an appointment to meet Stegmann sometime in either March or April, 1952. Do you recall that testimony?

A. I recall that testimony, yes.

Q. Tell us about that?

A. I think I was in Arizona then. I couldn't say about talking to him at McMinnville frequently. I certainly don't remember it at all.

Q. You don't recall any such incident?

A. Absolutely none, whatsoever.

Mr. Jaureguy: I think he has already testified about this Dawes, Smith and Wardell deal. I think he was put on the stand and he testified on that.

Q. Now, I wish you would tell us about your attempted sale of this Lost Lake timber. There has been evidence here, and I think you have already testified that you were planning on selling it to Multnomah Plywood?

A. Yes, I had sold them Bear Creek, what I consider Bear Creek area timber, and they were in an unhappy position log-wise; logging costs were very high, and their log inventory from as much information I could get on it was very low, so I figured they would be a good customer for any timber that I would have that could be adjacent to—anything going in the river anywhere, [1409] whatever it might be, so I met with them and I submitted this deal to them.

Q. Well, now, you are going a little fast.

A. I am sorry.

(Testimony of Chet L. Parker.)

Q. The first thing you did, who was the first man that you communicated with respecting this property, I mean from Multnomah Plywood?

A. Well, the first man was Mr. Smith.

Q. Do you remember, did you talk to him personally or over the phone or by correspondence, or how?

A. I think I first talked to him by phone.

Q. When was that?

A. Well, I don't remember the date.

Q. Well, now, the day that you went up and looked over this property was August 13th?

A. Yes.

Q. Mr. Kenny testified that August 14th, he was up there. A. Yes, he testified to that.

Q. Now, does that refresh your memory of the day you talked?

A. When I first talked to Mr. Smith, I had a hundred—there was another piece up there for him to look at when I first talked to Mr. Smith, and then I told Stegmann, as I remember, I couldn't be there that day, and I told him to take him up there on Lost Lake and show him that piece.

Q. Was that the 13th that you called [1410] him? A. Yes, I think it was.

Q. Do you remember what time of the day it was? A. Well, I think it was in the evening.

Q. You think it was in the evening?

A. Yes, early afternoon.

Q. Would it have been earlier in the day?

A. It possibly could have been, yes.

(Testimony of Chet L. Parker.)

Q. I suppose you testified before what time. I think you testified you didn't know what time you got back from Lost Lake?

A. No, I am not sure about that.

Q. And you do not know whether you called him before you went up or after you got back. Could you have called him from someplace around Lost Lake? You couldn't, could you? A. Well, no.

Q. You would have had to call him from Hood River? A. Yes, I presume that, yes.

Q. All right, then, what was the next step after he went up there and he got his survey——

A. Well, I went to see Smith about—there was a Marsh, a John Marsh was going to sell me, said he had a lot of timber up there. He was going to sell me a lot of it, so I talked generally with this man Smith about the whole area because I had the dump there, and without that dump, couldn't very well take any logs out, and even though it was a public dump, why, still it was controlling factors of getting logs into the river, a considerable amount. [1411]

Q. How was that? You say it was a public dump?

A. Well, it was and it wasn't. You buy your rights in there, and then if you are a large logger, why, you just fill up, and then the small loggers, they have to keep their truck there all day to get to dump, sometimes two days, sometimes they don't get to dump; consequently, they cannot dump their logs, and consequently they have to sell to big operators. That is generally true in that area. Now, in this

(Testimony of Chet L. Parker.)

area, you just can't hardly ship logs out of there without probably two companies like that, from then directly or indirectly, or else you leave them there, so that boom had a big, deciding factor in shipping logs out of the upper Columbia River.

Q. That is the boom that you had either purchased or obtained rights to?

A. I obtained rights, and at the time I did, all the boom pockets were taken up by other companies. I couldn't ship any logs over it, so I told the man I would furnish the money to extend two more pockets, and that would take up all the room he had. I had to do that because there wasn't any other boom place.

Q. Well, now, was that the transaction that Kenneth Abraham testified to? A. Yes.

Q. That was several months before this?

A. Oh, yes.

Q. Was there any connection between getting that boom and buying [1412] the Lost Lake property? A. None, whatsoever.

Q. Then you talked to Mr. Clyde Smith, you say, about this and some other piece of timber that you might have? A. Yes.

Q. And what happened next?

A. Well, as I remember, then I suppose Kenny's report came in, and I gave Smith the proposition what I would do. They owed me some money on Bear Creek. I think it was \$42,000 due either right then or thereabouts. I was not perturbed about getting it, but it was due and I wanted to clean that up.

(Testimony of Chet L. Parker.)

As I remember it, Ray Leonard was purchasing second growth out of that area that I sold him previously.

Q. Buying it for Multnomah?

A. Yes, and, of course, I don't think they had a deed for it. At least, it wasn't paid for yet, so I would release that.

Q. You are talking now of the conversation you had with Smith?

A. Yes, I would release Bear Creek, which would give them the right to sell the second growth, or whatever they wanted to do with it, to anybody they pleased. Then they would pay me \$25,000 cash, and then so much a thousand over a period of a couple years. I think it was \$25,000 in addition to that for every million and a half feet taken off of it, I believe it was.

Q. But was there a gross price agreed upon?

A. Yes. [1413]

Q. Would they get—regardless of the amount of timber they got off of it?

A. Yes.

Q. What was that price?

A. \$180,000.

Q. That is, they would pay you \$25,000 cash in addition to the \$42,000 that you had coming on Bear Creek?

A. Yes.

Q. Have you seen the minutes of that meeting?

A. Yes.

Q. Do you have them in mind now, what they show?

A. Well, pretty near, yes.

Q. I think they are Exhibit 117. Well, then, as a result of your conversation with Mr. Smith, did

(Testimony of Chet L. Parker.)

he decide that it was—what did he decide as to whether or not he thought the company would pay it?

A. Well, he had not been up there yet himself, personally, but he thought it sounded pretty good to him.

Q. But he wanted to go up and see it?

A. Yes, he wanted to go take a look at it.

Q. Before he took a look, did you meet with the Board of Directors?

A. I think I did. I think he wanted me to submit the proposition to the Board of Directors.

Q. Well, you mean with the group? [1414]

A. Yes, I think there was 10 or 12 of them, or so.

Q. Did you meet with them on the day that these minutes say there was a Board meeting?

A. Well, yes.

Q. This was August 20th?

A. It would have had to have been, yes.

Q. There were 10 or 12 there?

A. Yes, I think at least 12.

Q. And you and Mrs. Parker, and then the group? A. Yes.

Q. Was Mr. Johnson there?

A. That I don't remember. I don't believe he was, but I am not sure.

Q. Now, I do not quite understand the significance of this, if there is any, that they owed you \$42,000 on the Bear Creek property referred to in the minutes as the Nestucca River tract. Then it says, "They are willing to apply this \$42,000 to the Lost Lake tract, which, together with the \$25,000,

(Testimony of Chet L. Parker.)

will make a total of \$67,000." What I cannot understand is what difference it would make if you got \$42,000, whether it was applied on this or applied on the other.

A. Well, that would be deferred for a little while. They was in the bite of the line, more or less. They was going to sell to Roy Leonard and they was going to take his money, but it takes time to do those things, and the \$42,000 would be [1415] deferred to act as a down payment on this piece of property and, in turn, as I remember—yes, that is the way it was, and in turn they were to secure any additional amount by a mortgage on the piece down in West Fork.

Q. "Inasmuch as they want \$100,000 applied to this purchase, they are willing to accept the difference of \$33,000 at the time that we would start logging operations."

A. Yes.

Q. So you were getting what you call \$67,000 down? A. Yes.

Q. And then at some future date when they started logging operations, they would pay you \$33,000?

A. Yes, the following July, the following year, I think in July, they figured it would be, thereabouts, as I remember.

Q. Well, this was August 20th? A. Yes.

Q. And would it be practical to log up there, to close this deal and for them to still log the same year?

(Testimony of Chet L. Parker.)

A. No, it would be practically impossible.

Q. And so it would be the next summer before they could log? A. That is right.

Q. And the next summer, therefore, before you would get anything more than \$67,000 out of it?

A. Yes. of course, the \$42,000 I loaned them, you know, actually.

Q. Actually you would get twenty-five out [1416] of it? A. That is right.

Q. If you had not made this deal, you would have got \$42,000 on that Nestucca tract, the Bear Creek? A. Oh, yes.

Q. So you got twenty-five thousand more than you would have otherwise? A. Yes.

Q. And you would not have gotten any more until you started logging? A. That is right.

Q. Then you would have got \$33,000?

A. Yes.

Q. "The balance of \$80,000 would be required of us at about the rate of \$25,000 a month figuring that logs would be removed at a rate of about 1,500,000 feet a month."

A. Yes.

Q. That was agreed upon, was it? A. Yes.

Q. Then they say about you and Mrs. Parker being willing to deposit \$100,000 for their use if they needed it in handling the McFadon tract?

A. Yes.

Q. Can you tell us about that?

A. Well, they had a McFadon tract. I am not too familiar with the McFadon tract, but I do know where it is at, and Mr. McFadon—[1417] they had

(Testimony of Chet L. Parker.)

a—as I understand it a tentative offer on it. Mr. McFadon said he was not going to sell it until 1952, but the first month, the first of that year he would sell it.

The Multnomah wanted all the logs they could get that could go into the plant from anywhere, but they still wanted this down to West Fork for their green end plant which they now had there, and, consequently, just to be sure they didn't get in a bite there, they wanted to borrow. However, that didn't have too much to do with the deal, but it came up at this time. They wanted to borrow, might have to borrow a hundred thousand dollars. As it turned out later, I believe that they didn't buy the McFadon tract until practically another year went by. I can be wrong, of course, on that. That is hearsay.

Q. Then was that about all that took place at that meeting?

A. Yes, then as I remember we broke up, and they wanted me to take them up and show them the property.

Q. They were still there when you left? Were they still there when you left?

A. Yes, I am sure of that.

Q. Then did you take them up and show them the property?

A. Yes.

Q. And who went up that day; do you remember?

A. Well, my son and I went in his car, and

(Testimony of Chet L. Parker.)

Clyde Smith and two other men from the plywood company went up in their car, or some car, anyway. I guess it was theirs. [1418]

Q. Did you see these other two men he testified to, two loggers?

A. I saw their car come in as I was leaving. I didn't stay. I just took them down a path, as I remember, and my son showed them this corner that is out in the water.

Q. Yes?

A. And then we walked back to mine. I think I had the Suburban, but I am not sure. Then as we was leaving, a pick-up drove in with a couple loggers. I didn't recognize them, nor did I say anything to them.

Q. When you go from Hood River to the Lost Lake property, do you go by the Winans' place?

A. Yes, yes.

Q. You went by there that day?

A. Oh, yes.

Q. Did you see Mr. Winans?

A. I don't remember. I don't believe so. I am not sure.

Q. But you didn't go through the woods with them when they went through that day?

A. No, no.

Q. Then what next happened?

A. Well, seems like I called Mr. Smith, I believe, after that, and they—he indicated that he would take it, that they would work a deal—no, I am not sure whether I called him or he called me, but any-

(Testimony of Chet L. Parker.)

way, we made contact, and so he said, okay, they would set an appointment. They would call an attorney, make an [1419] appointment to make up this contract, this agreement, and so I went up to Bledsoe's office with Mr. Smith. I am sure it was Mr. Smith.

Q. Mrs. Parker was with you?

A. My wife was with me, yes, and as we talked about here, that was what Bledsoe was supposed to draw up, a mortgage on the Barbour tract. I am sure it was the Barbour tract, and make up the papers on this deal.

Q. Was the Bear Creek connected with it?

A. Well, intermingled with it, yes, some way or another. Then I left. I think Mr. Smith was still there when we left. Then I had a meeting with Mr. Johnson after that.

Q. Well, I would like you to tell us whether you have any recollection of getting anything from, any written document from Mr. Bledsoe?

A. Yes, I got an onion-skin draft of this thing that we proposed.

Q. What happened to that?

A. Well, it was quite a bit after that, and, as I remember, we threw it away because by that time, why, it was quite obvious that it couldn't be used.

Q. Well, then, thereafter tell us what happened from then on. Eventually you didn't make the sale?

A. Well, I met with Mr. Johnson at his office. I don't remember what date. It was quite late in this thing, but I had learned that—after Mr. Miller had

(Testimony of Chet L. Parker.)

told me this, why, I had got [1420] suspicious, naturally, of the title, and I told Mr. Johnson that I didn't think that I wanted to loan them the hundred thousand dollars, as I remember. I believe later on I told Mr. Smith there was something wrong with the title. I am sure I told Mr. Smith.

Q. Therefore——

A. Well, the deal fell through.

Q. Well, Mr. Johnson, I don't know as—I know about when you and Johnson, if at all, one of you told the other one the deal was off, or anything of that kind?

A. Well, consequently—as I remember, yes. Now, I don't know which way it was. I don't remember the particulars on it.

Q. Do you know whether, whoever called the deal off, was it on account of the hundred thousand dollars or on account of the poor title, or both?

A. Well, it could have been both.

Q. Or something else? A. Yes.

Mr. Strayer: What was the answer?

The Witness: Well, it could have been something else.

Q. (By Mr. Jaureguy): You say it might have been something else? A. It could have been.

Q. Could have been? A. Yes.

Q. At any rate, the deal never did go [1421] through?

A. That is right. I am thankful for that.

The Court: Haven't we wasted a lot of time? If it could have been something else, if the deal could have fallen through because of some other

(Testimony of Chet L. Parker.)

factor, haven't we wasted a lot of time, Mr. Jaureguy, if the deal could have blown up because of some other thing unconnected with the title? There was no firm contract, as I understand it now. I was under the impression, Mr. Jaureguy, that in your opening statement you contended that there was a firm contract between Multnomah Plywood and Mr. Parker, and that by reason of the defect in the title Mr. Parker was unable to comply.

Mr. Jaureguy: I am rather certain I did not make that statement, your Honor.

The Court: Well, I might be wrong.

Mr. Jaureguy: No, I am rather certain——

The Court: I got that impression.

Mr. Jaureguy: ——because I had not been under that impression for many months before I made the opening statement.

There was an offer and there was an agreement, but this thing came up, and so—there could not have been a binding contract until after it was signed. I didn't intend to create any different impression than what it was, that they wanted up there, and they had agreed on a sale. It was to be a confirmation. I am sorry that I gave your Honor an impression——

The Court: Perhaps I am stating it a little stronger and I [1422] am glad to have your explanation because now I remember that you are absolutely right, but what was the purpose of all this testimony now? What does it tend to prove?

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Well, it shows that at this time the officials, at least two of them have already testified, were of the opinion that this was worth \$180,000 and were willing to pay that much for it.

Mr. Krause: What officials?

Mr. Jaureguy: The same as our friend over here got in the testimony of Linville because here is an offer, the offer is enough, the value of property may be shown by an offer that is made.

The Court: Are you through with this witness?

Mr. Jaureguy: No, I have a little more.

(Discussion off the record.)

The Court: We will recess until two o'clock.

(Noon recess taken.) [1423]

Afternoon Session—2:00 P.M.

(Trial resumed.)

CHET L. PARKER

recalled, testified as follows:

Direct Examination

(Continued)

By Mr. Jaureguy:

Q. You have testified this morning about that Jeep transaction with a Jeep that you got from—that trade you sold and following testimony?

A. Yes.

Q. Have you checked the deposit slips to find out what date that was you sold it?

(Testimony of Chet L. Parker.)

A. Yes, I looked at them.

Q. What date is that?

A. Well, it was in December 1, 1951.

Q. December 1, 1951? A. Yes.

Q. Now, I want to hand you Exhibit 110, which purports to be a map of Township 1 South, Range 8 East of the Willamette Meridian. Do you know where I got that?

A. Yes, out of the Metsker book I had.

Q. You gave me a Metsker book, and I took this one out? A. Yes.

Q. How long had you had that Metsker book?

A. Oh, quite some time.

Q. I think you testified that you looked at the Metsker map on [1424] the 13th of August?

A. Yes.

Q. Is this the sheet you looked at? A. Yes.

Q. You say that it had this particular property marked as "Winans"? A. Yes.

Mr. Jaureguy: We offer Exhibit 110 in evidence.

Mr. Strayer: No objection.

Mr. Ryan: No objection.

Mr. Krause: No objection.

The Court: It may be admitted.

(Document, Metsker map previously identified as Defendants' Exhibit 110 for identification was received in evidence.) [1425]

(Testimony of Chet L. Parker.)

Cross-Examination

By Mr. Ryan:

Q. You were questioned—may I have Exhibit 83? Do you have that, that proof of loss or claim, Mr. Buell?

Mr. Buell: 81 and 82, you mean?

Q. (By Mr. Ryan): You were questioned about the ownership of the International, 1948 International truck and Page & Page trailer in which Mr. Stegmann also had some interest. Do you recall how you acquired your interest in the truck?

A. No, I do not. You said that I owned the truck and Mr. Stegmann had an interest also, didn't you?

Q. Yes, that you had some interest in that truck, do you recall?

A. I think I had a mortgage on it, and I am not sure, but I had lots of equipment then, my own, too, and some of them were Internationals.

Q. I am handing you Exhibit 81 which purports to be a Proof of Loss on that truck. Do you recall the circumstances under which that truck was damaged?

A. Well, if this is the one that had the Cat loaded on to it going up part of the road out of control near, well, from the CC Camp on Clarence Creek, then I do recall it.

Q. I would like to have you take a look at Exhibit 48 and in that exhibit at a mortgage from Walter Stegmann to George F. Lund. Would you refer to the serial number of the truck made [1427]

(Testimony of Chet L. Parker.)

out, as listed on the Proof of Loss, International truck? A. HB40017556.

Q. Now, this is one of a series of recorded chattel mortgages contained in Exhibit 48. The one to which I am referring is a chattel mortgage from Walter Stegmann to George F. Lund on an International truck bearing what I believe to be the same serial number. The date of this mortgage is the 13th of March.

Mr. Strayer: What year?

Mr. Ryan: 1947.

Q. Does that refresh your memory in any way as to this particular truck or anything to do with it?

A. I think I know Lund. I am not sure.

Q. Is it possible that you might have acquired an interest in that truck in dealings with Mr. Otto Heider? A. Yes, it is very possible.

Q. Do you recall that at all?

A. No, no, I do not.

Q. Does the check in payment out of this transaction, do you have that, Mr. Buell?

Mr. Buell: No, but there is a copy of it in that file.

Q. (By Mr. Ryan): Who was that made out to?

A. Chet Parker and Walter Stegmann and Caldwell Finance Company.

Q. Do you have any recollection of Caldwell Finance Company or its interest in this truck?

A. By golly, no, I do not. I didn't owe the Caldwell Finance [1428] Company and I never—I don't think I did, anyway.

(Testimony of Chet L. Parker.)

Q. Do you know whether you acquired any interest in this truck through the Caldwell Finance Company? A. It is possible.

Q. Well, were your dealings on this truck directly with Stegmann?

A. Golly, I really don't know, Mr. Ryan. I can't remember about it. I am sorry.

Q. Now, you testified that you went to Lost Lake with Mr. Stegmann on the 13th of August?

A. Yes.

Q. Did Mr. Stegmann remain at the lake with you for any length of time?

A. I don't think he did, as I remember. Of course, a lot of time has went by here, but, as I remember, he left earlier.

Q. You remained, and he left. Do you know where he went? A. No.

Q. Did he tell you where he was going?

A. Well, he might have, but I don't remember.

The Court: Was he alone when you were with him on the 13th?

The Witness: I am not sure, your Honor. It is too long ago, much too long ago to remember.

Q. (By Mr. Ryan): Now, this transaction regarding a White truck which you heard Mr. Ellis testify to, do you remember how you acquired the title to that White truck? [1429]

A. Well, as I remember, my wife gave Mr. Heider a check, and Mr. Heider gave me the title. I sent it in to the State. I got it in my name, and

(Testimony of Chet L. Parker.)

that is that. I guess that is the way it was. I am sure it was.

Q. Do you remember whether Mr. Heider had possession of the certificate of title to that truck at the time of this transaction?

A. No, I never paid much attention to it. I am not sure that day whether I was with my wife when the truck was purchased, when the check was given, or not. Too much time has went by. I can't remember. As far as the certificate of title, I possibly gave him a check. Mr. Heider sent it in, didn't give us anything. I would trust him with that much money.

Q. With regard to this transaction, did you deal entirely with Mr. Stegmann at any time?

A. No, I didn't have anything to do with Mr. Stegmann. I bought the truck from Mr. Heider.

Q. Did we have an exhibit regarding the motor number of that truck?

Mr. Strayer: Yes.

The Court: Won't the complaint filed by Francis Marsh indicate the motor number of the vehicle?

Mr. Strayer: Exhibit 122 is a certificate from the Secretary of State—wait a minute, that is apparently a duplication. 122 apparently was given as your check to Otto Heider as well. No, I am mistaken. I don't know what that exhibit number is. [1430]

Mr. Buell: The motor number is 140A something.

The Court: How much is the check?

(Testimony of Chet L. Parker.)

The Clerk: \$1,210.

The Court: \$1,210. Do you want that check, Mr. Ryan?

Mr. Ryan: In view of his testimony that his wife actually, he believes, handled this transaction, I think it can be more properly put to her, the question.

The Witness: I am sorry, I think I purchased it from Mr. Heider. I think she just made out the check, is what I think. That is, I don't remember distinctly by any means.

Q. (By Mr. Ryan): At the time of that purchase, was it your understanding that Walter Stegmann had any interest in the truck?

A. No, no, absolutely not.

Q. And that the truck was solely Mr. Heider's?

A. Yes, it was my understanding that the truck was at this Ellis Garage. Mr. Heider had it for sale.

Mr. Strayer: At what?

The Witness: Had the truck for sale. In other words, I could buy it from Mr. Heider. All I had to do was pay him for it. That is what I proceeded to do, and that was that.

The Court: Did you go down to the garage to look at the truck before you purchased it?

The Witness: No, I don't think I did, but I am not sure I didn't. I don't think I did, and I might have.

The Court: Well, when you couldn't get possession of the [1431] car, how did it happen you didn't go back to Mr. Heider and tell him that the car

(Testimony of Chet L. Parker.)

that you bought from him was being held by the garage?

The Witness: Well, as I remember, your Honor—it was a truck, by the way, and as I remember, Mr. Heider indicated to me that there was no trouble with possession.

The Court: There would be no trouble?

The Witness: That is right, as I remember.

The Court: After you found that there was trouble, how did it happen that Mr. Heider didn't get the truck for you?

The Witness: Well, he was the attorney for Ellis. There was some—I don't remember. It seems like he said, "Well, I sold you the truck, but I am the attorney for Ellis." So, therefore, somehow or other I went to the Marshes and had them get possession of it for me. That is all I remember.

Mr. Ryan: I have no further questions, your Honor.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Parker, what is the color of the suit that Mr. Jaureguay is wearing? A. Blue.

Q. And the color of the sweater that Mrs. Parker has on? A. Oh, kind of a yellow color.

Q. You see those books right there? What color is that? [1432]

(Testimony of Chet L. Parker.)

A. I am sorry, I don't know which one you are referring to.

Q. Well——

A. There was some light blue ones there.

Q. This one, that is a light blue? A. Yes.

Q. What color is this?

A. That is just a little bit lighter blue.

Q. Would you please hand the witness his deposition and turn to page 182. Turn to page 182, please. That is your deposition taken August 7, 1952, isn't it, Mr. Parker? A. Yes.

Q. All right. The first question: "Starting in June of 1950, how many cars did you own?"

Your answer: "I don't remember. I think at least two.

"Q. What were they?

"A. A Plymouth and a Mercury, as I remember.

"Q. What model Plymouth?

"A. '51, I guess.

"Q. Two-door or four-door?

"A. Suburban."

Q. You remember those questions and answers?

A. Oh, definitely, yes.

Q. All right.

"Q. It looks like a station wagon?

"A. Yes. [1433]

"Q. What color was it?

"A. I don't know. I am color-blind. I wouldn't know."

Q. Was that your answer?

A. Yes, definitely.

(Testimony of Chet L. Parker.)

Q. Are you color-blind?

A. Well, in shades in between, I am, yes, like a peach, whatever that is, and between your solid colors I am color-blind, yes.

Q. The next question:

“Q. Has it the appearance of what a person might describe as a station wagon? A. Yes.

“Q. And your other car was a Mercury?

“A. Yes.

“Q. What year was that?

“A. '50 or '51.

“Q. Do you recall what color that was?

“A. No, I don't recall.

“Q. What model was it, two-door or four-door?

“A. Four-door, I think.

“Q. You had those same cars in July of '51 and August of '51 and September of '51?

“A. I sold the Plymouth, and I don't know whether——

“Q. I am particularly interested in September, 1951. When did you sell the Plymouth?

“A. I don't remember. [1434]

“Q. Was it before or after September 15th?

“A. I don't remember. They had the title on it and the title was transferred. The State would have it, but I don't really remember.”

Q. Those were your answers to the questions that were put to you, weren't they?

A. Certainly.

Q. Now, let us go at this color business a little further. You can identify red when you see it, can you?

(Testimony of Chet L. Parker.)

A. That depends on whether it is a light or in a solid color. If my wife was wearing a yellow and a red, why, then I can tell the difference between the red and the yellow, but if a red and a green light goes on at a stop light, I cannot tell the difference, so there is a difference. I mean, there is a difference between the two. I only know them by position, and it is very confusing sometimes, believe me.

Q. Green you do not have any difficulty identifying, though, do you?

A. No, well, it depends on what it is. If it is a light, I do, but if it is a solid color, I do not.

Q. Well, the green of a fir tree, for example.

A. No, I can tell if it is green or if it is brown, I guess you would say. If the leaves are falling off or nature's red, I am not——

Q. When you were identifying the forest green, you said it was [1435] something like the color of a fir tree, did you?

A. Well, I think it is, yes. Forest green would be like a green fir tree.

Q. You never knew the color of these automobiles that you drive at all?

A. No, I don't remember. There was some funny shades. They would make a blue and just a little off black. They would call it something like this. Well, to me it just—that isn't the way it is.

Q. You do not know now what color automobiles you had at that time?

A. No, but my wife would know. She is not color-blind.

(Testimony of Chet L. Parker.)

Q. Has your driver's license a clause because of you color-blindness as between red and green?

A. Oh, I don't know, but I do remember when I first got my driver's license, they had a color chart, they had numbers on it. That has been some time ago, and my brother was taking his simultaneously, or at least was with me simultaneously, and he could see one number and I could see another one, and, of course, on his I didn't see his number. I don't know how he saw with his or how I seen mine, but they claim it was different.

Q. Are you talking about numbers, now, or colors?

A. Well, the colors had something to do with the numbers, it had round colored dots on the page you looked at, and he would see seven and I would see eleven, or something like that, which [1436] indicated that in between solid colors I was certainly color-blind.

Q. Will you take a look at your driver's license now and see whether there is a clause on it of color-blindness?

A. I am afraid I am an illegal driver. I am afraid I have been——

Mr. Jaureguy: Not if it is an Oregon license, it is not. I am in the same spot as my client.

Mr. Krause: I hope not, Mr. Jaureguy.

Mr. Jaureguy: I am not an expert on color-blind charts, but I know forest green because I had a pair of pants that were forest green.

(Testimony of Chet L. Parker.)

Q. (By Mr. Krause): Your driver's license has no clause on it, has it, Mr. Parker?

A. I am sorry, I only have a temporary license from Washington, State of Washington, and I filled it out. They didn't—

Q. You have not taken an examination in Washington?

A. Well, not anything to do with color. Over there they seem to be perturbed on how good you can see rather than the colors, but I did take one in McMinnville, Oregon, when I first got my driver's license and I was partially color-blind, and when I come to a stop sign, I had to know them by position. I cannot help it, either.

Q. Was your Oregon driver's license claused because of any color-blindness?

A. That I don't know, but it says in the record that I was partly [1437] color-blind.

Q. Now, Mr. Parker, how many times were you on the property, the Lost Lake property, during the month of August, 1951?

A. Oh, I suppose three or four months. I am guessing at it. I don't know.

Q. Well, you have testified that you were on there on the 13th of August, is that right?

A. That is right.

Q. Were you up there on any date prior to the 13th of August? A. Prior, you mean before?

Q. Before, yes.

A. Well, I was up in that vicinity before, yes.

Q. I am now referring to a period of a month

(Testimony of Chet L. Parker.)

or six weeks prior to the 13th of August. Were you on the property to look at it up there at Lost Lake during that six-weeks period before the 11th or 13th of August?

A. Those 68 acres of Mr. Winans, well,—28 acres that Mr. Winans sold me, or whatever it was, that is what you are referring to, or are we talking about the Lost Lake area?

Q. No, we are talking about the property that you bought there.

A. No, I was not up there before that.

Q. You were not up there prior to the 13th?

A. Not that I remember, no.

Q. Then when was the next date that you were on the property?

A. Well, I went up with Mr. Smith. I was up with Mr. Stegmann, [1438] and I was up with Mr. Winans. I think I was up with my wife, my son and I. I was up with two or three other guys. I don't know how many times altogether.

Q. You were there apparently five or six times, at least, during the month of August, then?

A. I don't know whether it was all during the month of August or not, but I think so.

Q. Well, according to the dates that you have testified to, you had the 13th, and then were you up there on the property on the 18th on the day on which the Election to Purchase was made?

A. I don't think I was. I don't know.

Q. Were you alone when you went up there on the 18th of August?

(Testimony of Chet L. Parker.)

A. I didn't say I did go up, sir, on the 18th of August. I don't know. I might have. I don't remember. Consequently, I don't know whether I was alone or not since I don't know whether I went or not.

Q. Well, were you up there on the day on which the option was exercised, the Election to Purchase was made? A. I don't think so.

Q. You were not there?

A. I don't think I was.

Q. Then you were up there on the 28th, because that day you had gotten the map down here and took it up there; is that right?

A. Well, I don't know whether that was the date or not, whether it was that date [1439]

Mr. Jaureguy: Pardon me, there is evidence that it was the 29th.

The Witness: That is what I thought it was, was the 29th.

Mr. Krause: Pardon me, the 29th.

Q. Do you have your diary with you there, Mr. Parker? A. Well, I have——

Q. Look at the 28th, and you will find according to your memo you were up there on that day.

A. Yes, it says that I was on there on the 28th. It says I stayed all night at The Dalles, Oregon, Motor Hotel, which I did.

Q. So you were up there on that day?

A. Well, I am pretty sure sometimes a day or two would go by and I would write this down. This was for my own information.

(Testimony of Chet L. Parker.)

Q. Now, was it the 28th on which you went into this engineer's office to get that chart?

A. Well, I would have to get the checks, sir, to remember what date it was. I think it was the 29th. I am not sure.

Q. The 29th? A. I am not sure, though.

Mr. Jaureguy: The date of the check, if that is what you want to know, is the 29th.

Q. (By Mr. Krause): Now, I would like to call your attention to the 18th of August again. A moment ago you said you were not up there on the 18th on the day on which the Election to Purchase was made. [1440]

A. I am sorry, I said I did not know whether I was up there or was not.

Q. Well, I referred not only to the date but also to the date on which the Election to Purchase was made, and you said you were not up there.

A. I did not say I wasn't up there. I said I wasn't sure whether I was up there or not.

The Court: Are you talking about the Lost Lake property, or does that include Mr. Winans' home?

Mr. Krause: Oh, no, no, I am just—oh, I may have confused the witness on that. I am sorry.

Q. When you said you did not know whether you were up at Lost Lake, I mean, you didn't know whether you were up there on the 18th, you referred to that you did not know whether you had been on the property that day; is that right?

A. On this Lost Lake property, yes.

(Testimony of Chet L. Parker.)

Q. At that Lost Lake property.

A. That Winans supposedly owned.

Q. Now, would you turn again to August 28th and read your notes on what you did on the 28th?

(Witness reads diary.)

Q. Now, you say there: "I and Myron and Walt Stegmann drove to Lost Lake so I could explain to Walt on the ground that I did not want Winans to get any timber in their reserved area and for him to try and run the lines accordingly." [1441]

You took Stegmann up there to the property to show him what part you would agree to could be reserved for Winans; is that right?

A. Well, I didn't want to get any timber in on it, I didn't, on the reservation.

Q. I understand that you have given your reason for it, but you made a special trip up there with Stegmann so that you could show him what part you would consent to as the reserved area?

A. Well, yes, more or less.

Q. Well, that is what you said in your diary, didn't you, Mr. Parker?

A. Well, you just read it, yes. I said in my diary I didn't want them to get any timber in that reserved area, sir.

Q. Yes, but whatever it says here is correct, isn't it?

A. Well, it should be.

Q. Now, Mr. Parker, what is your net worth?

(Testimony of Chet L. Parker.)

Mr. Jaureguy: Object to that as incompetent, irrelevant and immaterial.

The Court: Are you suing for punitive damages?

Mr. Krause: We certainly are suing him for damages, punitive damages.

Mr. Jaureguy: I take it that they have to show that there is ground for punitive damages before they can go into net worth of a man, not merely allege that they want it.

The Court: Well, I think probably that this would be more [1442] proper after you put on your case, and then you could call him at that time. This is not proper cross-examination.

Mr. Krause: Well, I recognize that it might not be proper on cross-examination and he might be my witness at the moment although he is an adverse witness, but otherwise—there is no prescribed order in which the testimony has to go in that I know of.

The Court: Well, I am going to sustain the objection now with leave to renew your request after you put on your case on the question of damages.

Mr. Krause: That is all.

The Court: Mr. Strayer?

Cross-Examination

By Mr. Strayer:

Q. Mr. Parker, when you testified on your deposition that you did not know what color your car was, were you being entirely frank?

A. Sir, I don't remember what color it was. I have—I buy a lot of vehicles, and actually even if

(Testimony of Chet L. Parker.)

I knew at the time I owned it, I would not be able to tell you. I can't even tell you the color of my car I have now.

Q. Well, your deposition was taken in the summer of 1952 regarding the color of a car that you had been using the previous August and September, isn't that right?

A. Well, as I remember, yes. [1443]

Q. Yes, now, were you being entirely frank in saying that you did not know what the color of that car was?

A. Well, did you want me to answer true, or was it yes or no, that I did or didn't? Could I say that I positively knew the color or could I say that, well, maybe it was some color or it might have been some other color? Golly, I mean, I am not familiar. This is the first deposition in my life I have ever taken. I thought I was supposed to just answer the questions yes or no. I was told to.

Q. In other words, then you did have some vague idea as to what the color was, but you answered the question the way you did because you did not know? You answered the question: "What color was it?" Answer: "I don't know, I am color-blind, I wouldn't know."

A. Well, I am color-blind, and I didn't know.

Q. Well, now, may I ask you, then, how do you know you do not have a green jacket of some kind or a green coat?

A. Because I have never purchased a green jacket for myself.

(Testimony of Chet L. Parker.)

Q. How do you know, if you are color-blind?

A. Well, when a sales person gives me green, why, then, it is green. Furthermore, I can—I can tell black and white and solid colors I can tell.

Q. You mean you ask a salesman the color a jacket is?

A. Well, they voluntarily say, "This is green; this is blue," or something. Furthermore, if I go along side of a fir tree, I can [1444] certainly tell the difference.

Q. So your testimony that you do not have any green jacket is based on what the salesmen told you?

A. Well, not in particular, but I have not any green jacket.

Q. Do you happen to own any, what do you call these jackets that practically every timberman has? Do they call them timber cruiser's shirt, or something of that kind, cruiser's shirt?

A. Cruiser's what?

Q. It is a very dull green color. Well, you have seen many of them, I am sure, have you not?

A. I have seen what they call forester's clothes. They are green. They tell me they are green. They must be green, and I do not own any like that.

Q. Have you ever been to a meeting or a convention of loggers or timbermen? A. Yes.

Q. Now, the kind I am talking about is a, well, the jacket is kind of a combination shirt and jacket. I think they refer to it either as a timber cruiser's shirt or timber cruiser's jacket. Do you know what

(Testimony of Chet L. Parker.)

I am talking about? A. Well, I am sure I do.

Q. You have never owned one like that?

A. I do not personally, no.

Q. Now, you say if you had been wearing a hat, you would have been wearing a tin hat? [1445]

A. I had been wearing up here—now, let us keep this tin hat business straight. This tin hat I am referring to, what the old loggers call a tin hat, that is a canvass hat. It is not a tin hat, but they call it a tin hat.

Q. Does it look like tin?

A. Well, it gets as hard as tin.

Q. I am trying to find out, does it look like tin hats that these loggers wear out there in the woods?

A. No, that is why I am trying to clarify that. Absolutely it did not.

Q. Is it shaped like those?

A. No, no, they get to be every shapes you can imagine.

Q. There is not anything particularly distinctive, then, about the hat you were wearing?

A. Only it was, one was what they commonly call a tin hat. Loggers refer to it as a tin hat.

The Court: As a matter of fact, Mr. Parker, they have not sold this kind of hat for nearly fifteen years?

The Witness: They still sell them, sir.

The Court: You mean darker brown ones that are absolutely stiff? You make trousers of them and coats?

(Testimony of Chet L. Parker.)

The Witness: Yes.

The Court: In the last fifteen years, haven't they changed the model and used a soft, pliable canvas which is waterproof?

The Witness: Yes, and now they have them again, sir. [1446]

The Court: They used to be manufactured by Hirsch-Weis, weren't they?

The Witness: A lot of them were.

The Court: I used to sell them.

Mr. Jaureguy: I think I bought one a year ago.

The Court: It is a real stiff one, and they make it in coats and trousers.

Mr. Jaureguy: I have the trousers, too.

The Court: You have the trousers?

Mr. Jaureguy: I did a year ago. They do not fit me now.

The Court: I have never seen them for more than 15 years.

The Witness: However, I believe my hat is pretty close to that, though.

Mr. Jaureguy: I bought mine in Eugene.

Q. (By Mr. Strayer): Well, now, did I understand you to say, Mr. Parker, that you had at some time or other been in the Parkdale Ranger Station on some other matter?

A. Yes. Now, I am not sure that I was in there, but I thought I was.

Q. Well, now, when do you think you were in there?

A. Well, I am sorry, I can't remember. My mem-

(Testimony of Chet L. Parker.)

ory is not that good. I would have to get some event or something that might connect me to it. I cannot—it is not clear in my mind.

Q. Well, do you think it was in 1951?

A. Well, I think maybe it was, but I am not sure. [1447]

Q. What business were you on when you went in there?

A. Well, it would have to be something under timber, I think or maps, or something like that.

Q. Do you think it might have been in August of 1951?

A. No, no, I am sure it wasn't in August.

Q. Well, was it before August or after August?

A. Well, I am sorry, I can't remember.

Q. You are sure it was not August, and you do not know whether it was before or after August?

A. Well, the reason I am sure it was not August is because it referred to what I have had in August. Otherwise it could have been any month, any day. My memory is not good enough that a year can go by and I can remember where I was exactly on that particular day. I am sorry.

Q. Have you taken the entries on through your diary to see if you can find out when you might have been in there?

A. I have read it over some, but I do not seem to find the information.

Q. You found no entry of your ever having gone to the Parkdale Ranger Station?

A. Well, I was not particularly looking for the

(Testimony of Chet L. Parker.)

entry of going in there or not looking for one either.

Q. On the occasion when you did go there, did you meet either Mr. Parrott or Mr. Petersen?

A. Well, sir, I am not sure whether I did go or didn't go, but [1448] I have seen the tall fellow here, that I think—however, my memory certainly is not as good as his. I think I have seen him, but I am not sure where, but maybe that is—since he was up in that area maybe. I am sure if he had been in a crowd I would not have recognized him.

Q. You have no recollection of ever having met the other man?

A. No, I don't think I have ever seen the other fellow before.

Q. On this occasion when you think you went up to——

A. Pardon me, which other man are we talking about?

Q. We have two Rangers, one was Mr. Parrott and one was Mr. Petersen.

A. Well, the round-faced fellow that was here once, I have seen him once before and talked to him once.

Q. You are talking about Mr. Holtby; are you not? A. I suppose I am. I don't know.

Q. I am talking about Mr. Petersen and Mr. Parrott, the two men who testified that you came into the Parkdale Ranger Station on August 13th and talked to them.

(Testimony of Chet L. Parker.)

Now, had you ever met either of those men before?

A. I think this tall fellow I have seen before, but I am sorry, I don't know where or under what circumstances, and I am not sure that I have ever seen him before.

Q. Well, was anybody with you when you went up to the Parkdale Ranger Station?

A. I am sorry, I don't know [1449]

Q. You have no recollection of that?

A. Well, it seems like I went up there, but I am not sure about it.

Q. Do you know where the Parkdale Ranger Station is?

A. Well, I think so. It is in Parkdale.

Q. What route do you take to get up there?

A. You mean the number of the highway?

Q. No. A. I wouldn't know that anyway.

Q. Let us start out this way. You know that when you are going to Lost Lake you take the road from Hood River to Dee, do you not, and you turn off before you get to Dee; isn't that right?

A. Well, I suppose it is. You have probably been there more than I have.

Q. As a matter of fact, I have never been up there. I am trying to find out from you.

A. I am not sure you are right, or I am not sure you are wrong.

Q. Isn't it also true that in going to Parkdale Ranger Station instead of turning off on to Lost Lake, you go right on up the road into Dee, go clear

(Testimony of Chet L. Parker.)

to the end of the road, and that is the Parkdale Ranger Station?

A. It could be. I am a little vague in my mind where it is at. Doesn't the highway—oh, golly, there is so many of them. Isn't there one up there, the Mt. Hood Loop highway, that goes near Dee or some other—— [1450]

Q. I could not tell you, Mr. Parker; I could not tell you; I could not help you.

A. I was only trying to help. I am sorry.

Q. You have heard the testimony about two men in there about 5:45 p.m., August 13th, interested in this particular timber, the Winans' tract of timber at Lost Lake. Now, while you were at Lost Lake, as I recall your testimony, you were there nearly all day. Did you see anybody looking at the Winans timber or the Lost Lake timber, either the 40 or the 25 acres?

A. There was a correction on that on my deposition, sir, as to how long I was there.

Q. Irrespective of how long you were there, you were there for four or five hours, were you not?

A. I was there for some time.

Q. Didn't you see anybody looking at that timber while you were there?

A. Looking at this same timber?

Q. Yes.

A. Well, not that I remember of, offhand.

Q. That is, you mean to imply that you saw someone looking at some other timber that day?

A. No, my recollection of that, I don't know—I

(Testimony of Chet L. Parker.)

mean, you see so many people up there, but I am sorry, I can't.

Q. You didn't see many people on August 13th, did you?

A. I don't know which date it was, but sometimes you go up [1451] there, and there would be thousands of people up there, just people everywhere. Behind every tree and behind every bush there would be somebody, and I don't remember which times it was, but at times there was a tremendous amount of people up there.

Q. Well, now, do you have any notion who it might have been that went in to the Ranger Station on August 13th to talk about that property?

A. I have——

Q. What? A. Pardon me?

Q. Do you have any notion who that might have been?

A. Well, of course, even if I had an idea, I might have an idea who it was, I had no—I don't know, it wasn't me. That is about all I can speak for myself.

Q. Well, has anyone told you it was him that was there? A. No, I don't believe so.

Q. Do you have any information on it at all?

A. No, not anything clear at all.

Q. Well, do you have any idea at all?

A. Well, of course, since Stegmann left me, naturally, I think maybe Stegmann could have been there. I mean, I am influenced by that. I don't know whether he was or wasn't. I wasn't with him.

(Testimony of Chet L. Parker.)

Q. Now, Mr. Parker, you don't mean to tell me that you have not asked Stegmann if he was there, have you?

A. I have not discussed this thing since it started, as I remember, [1452] discussed this trial with Mr. Stegmann.

Q. Or before? A. Before the trial.

Q. Or at any time?

A. Well, he came at one time to get some papers from me, but I never asked Mr. Stegmann.

Q. The question is this: Do you mean to say that Mr. Stegmann has never discussed with you whether or not it was he that was at the Parkdale Ranger Station on August 13th?

A. Not that I remember, no.

Q. Now, on this White truck that you bought, you paid, what was it, \$1,210 for that White truck and Walker dual-axle trailer? How did you find out that Mr. Heider had that truck for sale?

A. That I don't remember. In fact, when this thing came up I didn't even remember of buying it.

Q. Well, did you have any information that that truck had been operated by Mr. Stegmann previously? A. Well, Heider might have told me.

Q. Stegmann might have told you, too, mightn't he?

A. Well, or Willamina Lumber might have told me. It seemed—I was up to Willamina Lumber a lot. I don't think Stegmann told me, however.

Q. Well, did you know that your wife, Mrs.

(Testimony of Chet L. Parker.)

Parker, had been down talking to Mr. Ellis to find out how much Mr. Ellis' bill was?

A. Well, she naturally could have been. It seems like Willamina [1453] Lumber had something to do with that, but it is not fresh in my mind by any means.

Q. Was it your understanding that the truck was owned outright by Mr. Heider?

A. Well, I bought it from him, and I paid for it. I figured he had a good right to sell it to me.

Q. Did you figure that it was a pretty good buy at \$1,210?

A. Yes, sir, or I would not have bought it.

Q. As a matter of fact, how much was it worth, Mr. Parker?

A. Well, that is speculative, sir. That was a bad year. That was a terrible year to sell or give any logging things away in the first part of it. The first part of that year, for example, I knew of a pretty new Diesel, intact, that sold for \$5,000 to Axel Erickson that year. I think it was Axel Erickson that was out here for Western Equipment. That same truck today would probably sell for \$20,000 in the same condition when it wasn't what you would say an exceptional bargain by any means.

Q. What do you think the fair market value of that truck and Walker trailer was on July 20th, the date that you bought it from Mr. Heider?

A. Well, I felt that I paid about all it was worth.

Q. \$1,210 for the truck and the trailer?

(Testimony of Chet L. Parker.)

A. Yes, because for good evidence on that thing I don't think Heider would give me anything, and he certainly would know what the truck was [1454] worth.

Q. You have just recently sold that truck and trailer; have you not? A. No, not recently.

Q. Well, let us have that certificate from the Secretary of State. While you are looking for it, Mr. Parker, how much did you sell it for?

A. I said it seems like it was three thousand. By golly, I don't know. I didn't get any money so I don't know how much it was. I don't know—when you say you sold it, do you mean I really did? I practically gave it away. I didn't get any money for it, so I guess I really gave it away.

Q. Well, the certificate from the Secretary of State states: "The above title has been received in this office endorsed for transfer to Civic Lumber Company, 18236 Northeast Glisan, Portland 16, Oregon, showing a lien in favor of Chet L. Parker, 901 East 26th, Vancouver, Washington. The title is in the process of being transferred to Civic Lumber Company."

So, apparently, this was in the process of transfer on January 21, 1953, the date of this letter, so the sale has been quite recent, has it not, Mr. Parker?

A. No, it has not. It has been three or four months ago.

Q. You don't remember what—

A. Maybe longer, I don't know; maybe five, four or five months ago.

(Testimony of Chet L. Parker.)

Q. You do not remember how much the consideration was for that? [1455]

A. Well, I didn't get any money down on the deal, and if it ever hauls any logs, I might get whatever the purchase price was. There is a contract on it somewhere. I think it was \$3,000 or something, and in the meantime, if they just junked it, I got nothing.

Mr. Strayer: Have you got that here?

Mr. Jaureguy: I will look for it during the recess. I am getting a lot of scolding here for lots of documents that my clients want in their possession, turning them all over. I am wondering if we have to do this.

The Court: Well, they will all be returned after the case is over, and if this document is offered and your client wants it, a copy will be made and substituted.

Mr. Jaureguy: I anticipate that from time to time I will have to come up and get permission to take a check or something, and we could substitute a copy.

The Court: That is perfectly all right.

Q. (By Mr. Strayer): Without taking the time to go through this in detail, it appears that on August 11, 1952, you sold it. Apparently the purchase price of it is \$3,000 to be paid within 8 months; is that right, and it apparently is to be paid off by so much a thousand on logs?

A. Yes.

Q. Now, you purchased that from Mr. Heider

(Testimony of Chet L. Parker.)

on July 20, 1950, and on July 22, 1950, you sent your title in for transfer. On [1456] July 24, you demanded possession of it, and Mr. Ellis refused to give the truck to you, and is it your testimony that you then went to see Mr. Heider about getting it, or did you go to Mr. Marsh?

A. I don't know, it seemed like my wife—I dislike to put all the blame on her—but it seems like she—I was logging then, as I remember, and during the day time she took care of any of those things.

Q. Did Mr. Stegmann, by any chance, use that truck after you got it?

A. For any of his own business?

Q. I don't care, for any business, did he, by any chance?

A. I had it parked there at McMinnville, and everybody practically used it but me. The reason I say that, my brother would take it and park it over to his place and use it, but it was my truck. I don't think it was used but very little after I purchased it, maybe two or three trips.

Q. How does it happen, Mr. Parker, that you never took any depreciation on that truck in your income tax return?

A. Well, that I don't know. I think if we sold some other car, then—of course, I am not an auditor, but, as I remember, if we paid some cash for something and then—we would not have to take depreciation, as I remember. In other words, you would not have to take it. You could keep it and

(Testimony of Chet L. Parker.)

then if you realized the same amount, or whatever you realized, why, that would be all [1457] right.

Q. I notice that, according to your returns, you were quite meticulous in taking depreciation on your equipment, in your, on your Ford and on your Mercurys, on your Ford pick-up and Jeep, your attachment, even on a desk and chair here you took depreciation.

A. Yes, but there was an awful lot of items I didn't take depreciation on, besides the White truck.

Q. Now, when you got that truck from Mr. Heider, did you get a bill of sale or anything of that kind from Mr. Stegmann?

A. I don't remember at all.

Q. Did you notice that the certificate of title was in the name of Mr. Stegmann?

A. I never paid a bit of attention. I don't know whether it was or it wasn't.

Q. You left that all to Mr. Heider?

A. I gave him a check, as I remember. Well, I don't know whether I even gave him a check. I think my wife gave him a check.

Q. Now, on this Jeep deal, do you remember how much Tilbury Motors wanted for that Jeep pick-up?

A. Pardon?

Q. Do you know how much Tilbury Motors wanted cash for the Jeep pick-up?

A. No, I don't think I ever asked them that.

Q. All you asked—all you dickered about was

(Testimony of Chet L. Parker.)

the difference [1458] between your Jeep and theirs; is that right?

A. That is what I was mostly interested, how much money it would take.

Q. How did you arrive at the valuation in your income tax return on the Jeep that you put down?

A. I don't think I arrived at it, I don't know——

Q. I assume you probably gave the information to your accountant to determine; did you not?

A. Well, my wife and I probably did, or else he established a fair market value for it, or something.

Q. I notice that you—you stated the cost is \$1,392.71 for the Jeep pick-up. You have no idea how that was established?

A. No, because after we got it, we put stuff on it, sir, we put bumpers on it. We put a winch on, as I remember. There was several items, so I suppose that it accumulated, I don't know. Each item I put on it, I suppose, could be added to its value.

Q. Well, your income tax return apparently reflects the cost to you at the time that you got it. Whether it does or not, I don't know, of course.

A. I do not, either, sir.

Q. Do you know whether that \$1,392.71 includes value of the old Jeep that you turned in? I suppose it probably does, does it not?

A. Well, I suppose.

Q. Is it your testimony that your negotiations bogged down because you say that they wanted \$500 difference, and you only wanted [1459] to pay \$450?

(Testimony of Chet L. Parker.)

A. Well, finally I got them down to five hundred, as I remember, and I don't think I made them an offer of \$450 right then, but bear in mind I am not—it is not absolutely clear to me. That is as I remember.

Q. Well, now, what do you remember about Mr. Stegmann's interest in buying your old Jeep? Did he come around to look it over?

A. I do not. I never saw him, as I remember, at my place.

Q. Did he ever discuss with you his desire to buy your 1948 Jeep?

A. Not mine, but it seems like there was—he was looking for one, or something, once.

Q. Did you have any idea whether he was going down to Tilbury's and was going to make an earnest money deposit on a contract to buy your 1948 Jeep?

A. I don't even know whether he did make a deposit to buy my Jeep because I still owned the Jeep and, consequently, anyone that bought it from me would have to buy it from me, I presume.

Q. All right, Mr. Parker, but did you have any idea that he was going down to make an earnest money deposit to buy that Jeep?

A. You mean before I went to see the same Tilbury's place there?

Q. Before you bought your 1949 Jeep?

A. Oh, no, I had no idea he was going down there.

Q. Did you find out afterward about it?

A. Well, now, I am not sure I did or I didn't.

(Testimony of Chet L. Parker.)

Q. Did it come to you as a great surprise when it came out in [1460] this trial?

A. That is not quite the word for it.

Q. I assume you did know about it?

A. I say, that is not quite the word for it, sir. I was very angry about it.

Q. When were you angry?

A. When it came out in the trial.

Q. Well, you were not surprised then?

A. Well, I didn't have time to be surprised.

Q. You do not know whether you had heard about it before that or not?

A. Well, it seems like there was casual mention of it once, but I don't remember.

Q. Did Mr. Stegmann ever tell you about having made this \$50 earnest money deposit?

A. He might have, but I don't remember that, either.

Q. Do you remember whether or not you paid him the \$50?

A. No, I am sure I didn't pay to him a \$50 to pay on this Jeep.

Q. Do you know what that \$50 check was for on the 29th of November, I believe, 1950?

A. Well, I don't know that I gave him a check, a \$50 check, on the 29th of November, 1950.

Q. Well, let us assume that you did. The check is in evidence here now. Assume for the purpose of the question that you did give him a check for \$50 on November 29, 1950. Do you know what [1461] it was for?

(Testimony of Chet L. Parker.)

A. Well, it may have been for some rigging. I bought some rigging from Mr. Stegmann. I believe I had my D-8 then. I can tell from the income tax return. I believe I had my D-6 and D-8 and my Peterbilt truck, and he had some rigging around, and, as I remember, I think I purchased some rigging from him.

Q. You would think that was in payment for rigging?

A. It could have been because I do know I bought some rigging from him.

Q. You say you were in Arizona at the time that Mr. Parman testified that he called your brother's house?

A. I say I think I was.

Q. What makes you think so?

A. Because it was warm that time of the year.

Q. When did you go to Arizona?

A. Well, I think it was in December.

Q. Of what year?

A. 1950, I believe it was. I don't know—1951, I guess it was, 1951.

Q. You went to Arizona in December of 1951. When did you come back?

A. March, I believe.

Q. March of 1952?

A. Yes, I believe that is the way it is.

Q. Who handled your various timber purchases while you were away? [1462]

A. I don't think I purchased any, sir.

Q. Didn't you buy that Northwest Door timber?

A. Well, I bought it in March, I think it was, as

(Testimony of Chet L. Parker.)

soon as I came back. I believe I bought it in March.

Q. Have you any idea who it was that your brother might have put on the phone at his house that represented himself as Chet L. Parker?

A. Well, I am very doubtful if my brother did such a thing.

Q. Now, on this negotiation that you had with Multnomah Plywood, isn't it true, Mr. Parker, that Multnomah Plywood decided not to buy that timber before there was any discussion about this title defect?

A. Well, it is not too clear to me. Multnomah Plywood was up there in September looking at this property a long time after this and I——

Q. Your meeting with the Board was on September 20th?

A. September—October—in October. Wait a minute. Let us see now.

The Court: August 20th.

Mr. Strayer: August 20th, I beg your pardon, and I believe late in—your testimony is they were up there in September or October?

A. No, I believe it was September they were up there looking at it.

Q. When was it that you took Patrick Lumber Company up there? [1463]

A. I don't know. I would say it was possibly in September.

Q. Well, your diary shows that date, doesn't it?

A. It shows on the ninth month, eighteenth day of 1951.

(Testimony of Chet L. Parker.)

Q. September 18th? A. 18th, I guess it is.

Q. September 18th? A. Yes.

Q. Now, on the 17th I notice that you also showed it to Vancouver Plywood, Mr. Olson of Vancouver Plywood? A. Yes.

Q. Now, do you mean you were still trying to sell this plywood to other people although you still had pending negotiations with Multnomah?

A. I was not sure they was going to go through with the deal. I had lost ten thousand bucks on a deal before with them and where I could have sold for more money.

Q. You knew that any kind of a deal with Multnomah had to be approved by their Board of Directors; did you not?

A. Yes, and I presumed they was all there when I talked to them on it.

Q. What is that?

A. I presumed they was all there when I talked to them.

Q. When was it that they were all there?

A. I don't know, that one night I was down there to see them.

Q. On August 20th? [1464]

A. Yes, August 20th.

Q. Well, did you understand that a binding contract had been made, that they had approved the sale right there and then?

A. Well, I say I thought they were all there then.

(Testimony of Chet L. Parker.)

Q. Let us assume they were all there. Did you understand that they had agreed to buy the property?

A. I was led to believe that if they approved it the following time, the two directors, that would be a deal.

Q. Well, but they expressly reserved the right to go over, look it over and make up their minds, didn't they? A. Oh, yes.

Q. That was right in their minutes?

The Court: I think that is enough on that point.

Mr. Strayer: All right, your Honor.

Q. Now, this boom you had out there, you sold that boom in the fall of 1951; did you not?

A. As I remember, yes.

Q. I would like to get straight in my mind, if your Honor will bear with me a moment, I am not clear in my mind how that proposal was to be handled with Multnomah Plywood. Correct me if I am wrong on this summarization, Mr. Parker.

Your proposal to them was that they were to pay you \$25,000 in cash, plus approximately \$42,000 that was due on your Bear Creek timber, paying that amount down; secondly, the payment on the Bear Creek timber would be deferred until a later date and [1465] would be secured by a mortgage, am I right so far?

A. I think that is the way it was.

Q. Yes; and thirdly, that the balance of the \$33,000 would be paid to you in cash before the timber was cut, making a total payment to you of

(Testimony of Chet L. Parker.)

\$100,000, and then a balance of \$80,000 would be paid as the timber was cut?

A. You have not got it all in there, but then that is generally, I guess, what it is.

Q. Now, your diary, I notice, says that the balance of \$33,000 would be paid—I believe you put it, will be carried until next year. Is that intended to mean the same thing, that it will be carried until the timber was logged?

A. No; until it was cut. They couldn't cut during the wintertime, so it would be cut next year. Of course, they could cut it if they wanted to before then, at any time.

Q. I understand, but it was your understanding that it would not be cut until the following July, didn't you say?

A. Well, they wanted that exception, that they might not cut any until that time, as I remember.

Q. Now, is it your recollection, you say you had an onionskin copy of the contract that Mr. Bledsoe prepared. Is it your recollection that that contract outlined the terms substantially as I have summarized them here?

A. Well, of course, it was two pages, sir, and I don't remember, but generally [1466] speaking, I——

Mr. Strayer: I think that is all.

Mr. Jaureguy: That is all.

(Testimony of Chet L. Parker.)

Examination

By the Court:

Q. I am going to go back to that tin hat, also, Mr. Parker. A. Yes, sir.

Q. You say that this was that stiff kind, and the technical name for that is "aqua-pel," isn't it? Do you remember the color of that hat?

A. Well, it was so darn dirty, filthy, greasy, and stuff.

Q. How many years had you had it?

A. Oh, a long time, sir. I still have it.

Q. You can tell colors; now, can you, if they are solid colors?

A. If they are just absolutely distinctive, I can tell.

Q. Mr. Parker, I sent in for an inquiry just a minute ago to find out what colors they make in them. I thought they used to make them in brown. I have not seen them for years. There is only one color made for that, and that is solid green. Do you think that your hat was solid green color?

A. No, absolutely not. In fact, I don't like to differ, but when I was at Medford we bought one like it, and I am sure it was not green.

Q. You are talking of the hard, water-repellant clothes?

A. The clothes when they are dry is pliable. When they are wet they will stand right up. You jump out of them in the morning, stand right up against the wall. [1467]

(Testimony of Chet L. Parker.)

Q. Now, did you have your coat made out of the same material?

A. No—wait a minute, I am sorry, I have a raincoat like that.

Q. But the raincoat you have is made out of softer material, isn't it?

A. No, it will stand right up when it gets wet.

Q. Do you know what they call that? Is that what they call Tintex?

A. I am sure not, sir. It is canvas.

Q. I mean, the trade name, Raintex or Tintex?

A. I am sure it is not.

Q. The manufacturers say they only make that in one color now, and that color is green.

A. We are talking about two different things here, without a doubt.

Q. The hard one, which is known as Tinclothes, the message says at one time they made Tinclothes in brown. The new color is a shade of solid green. They no longer make brown shades. That is the hard one.

Now, in the softer one, the message is that the Raintex clothes are all made in green. Now they do not make brown at all except that there is one brown hunting coat, a number which is carried only by the better stores and not by the general run of stores.

So if you had a coat of that kind, could you tell whether it was green or not? [1468]

A. Well, I have had it for a long, long time. I have had this coat, hat and pants, and I didn't, sir,

(Testimony of Chet L. Parker.)

have very much of the habit of, in August, wearing my tin raincoat and this old hat I had. I used to do the work almost naked when I was a highclimber.

Q. That was hard, though, the old tin-type hat?

A. That is right, a hard one.

Q. It would be very unlikely you would be wearing that in the month of June or August?

A. I don't think I had a hat on, but I am not sure I didn't have a hat on.

Q. Did you have a different kind of a hat, not a water-repellant hat, that you used in the woods?

A. No, I could only—I only have afforded two hats, a dress hat and that old hat.

The Court: That is all.

Mr. Jaureguy: That is all. [1469]

* * *

LOIS PARKER

recalled to testify in her own behalf, having been previously sworn, was examined and testified as follows:

Mr. Jaureguy: If your Honor please, I have another one of these documents.

The Court: Have it marked.

Mr. Jaureguy: This is a copy of one we have in evidence.

(Carbon copy of letter from Title and Trust, Hood River, Oregon, to Chet L. Parker, dated August 15, 1951, marked Defendants' Exhibit 123 for identification.)

(Testimony of Lois Parker.)

Direct Examination

By Mr. Jaureguy:

Q. Mrs. Parker, I am handing you Exhibit 123, which is a carbon copy of the title report from the Title and Trust Company on this property, and ask you whether, when you were with Mr. Abraham on the 11th of September, 1951, you had that with you?

A. Yes, I did.

Q. What did you do with it?

A. I gave it to Mr. Abraham to check these mortgages and see if they had been satisfied.

Q. That report shows a mortgage and release with the date and book and page, and the extension of the mortgage and the foreclosure?

A. Yes, suit to foreclose, yes.

Q. You say you gave that to him. Then what did he do? [1474]

A. Well, he went to the back part of the court house there where they have those mortgage records and did something. Pretty soon he came out and said everything had not been recorded yet, but the man had told him the papers came in satisfying these.

Q. Then you went over later to the office of Vawter Parker? A. Yes.

Q. You heard the testimony of Mr. Abraham about what you said, something that he understood you said about Mr. Stegmann buying this property?

A. Well, yes, I heard that.

(Testimony of Lois Parker.)

Q. You heard that. Did you make any such statement over there? A. No, I did not.

Q. Could you give an explanation of what you might have said that he misunderstood?

A. Well, the only thing that I knew at all, and that was supposed to be a joke, was that Mr. Stegmann had an awfully naughty little boy, and he just remarked to us that that would be a good place to have a cabin to sort of stake him out. I know he came to our house once and, gracious, the curtains got kind of brought down, and he got in to so many things I guess he was a little embarrassed about it, and I may have said something about that, but it certainly had nothing to do with Mr. Stegmann buying the property.

Q. Did you know at that time that Mrs. Stegmann was expecting a baby? [1475]

A. Well, yes, I knew it.

Mr. Jaureguy: I will offer in evidence 123, I think it is, that we have just tendered to the witness.

The Court: Any objection?

Mr. Strayer: No.

Mr. Ryan: No.

Mr. Krause: No.

The Court: It may be admitted.

(Document previously marked Defendants' Exhibit 123 for identification was received in evidence.)

(Testimony of Lois Parker.)

Mr. Strayer: I assume this is a copy of the one already in?

The Witness: That is right.

Mr. Jaureguy: That is right, yes.

Then after he brought the deed back, he testified that you told him whose name to put in as grantee?

A. Yes.

Q. Now, can you explain why the name had not been—or why he had not been advised of the grantee's name prior to the time he brought back the deed?

A. Well, he just didn't say anything to me about it.

Q. What about the day before? Did you have some talk with him about it?

A. Well, yes, but I told him we would decide that evening, and I would let him know.

Q. I think there was some explanation by your husband when he [1476] was on the stand before as to the question that was in your mind as to who should be the grantee? A. Yes.

Q. You say you explained that to Mr. Abraham the day before?

A. Yes, I think I did say something to him about what our reason was for not doing it, but I didn't decide that day.

Q. Then the next morning before he went over to Vawter Parker's office, what would you say as to whether the question of who should be the grantee came up at all? A. He never asked me.

Q. Did it ever occur to you to tell him?

(Testimony of Lois Parker.)

A. I didn't know it made any difference.

Q. Well, what I am getting at is this. Had you and your husband decided by that time who the grantee should be?

A. I just really don't believe that we had decided.

Q. Well, I am talking now about——

A. Oh, the next morning?

Q. The second day, the morning?

A. Oh. Well, when he brought it back, I just put my husband's name in.

Q. Well, before he went over, did you know whose name should be in it?

A. Oh, yes, we decided.

Q. That is what I am getting at when I ask you why you didn't tell him before he went over. [1477]

A. He never asked me.

Q. Did it occur to you before he went over to tell him?

A. No, I didn't think it mattered until it went on record.

Q. Did the subject come up at all or occur to you? A. No, I never even thought about it.

Q. You testified before that when Abraham came back after the transaction he told you about it, this statement that Mr. Winans had made about some technicality in title. I don't know whether you told us where you and he were when he told you that.

A. Well, we were back in his private office by then.

Q. Had the deed been recorded? A. Yes.

(Testimony of Lois Parker.)

Q. Stamps had been put on it, of course?

A. Yes.

Q. And then you went up to his private office?

A. No, we first went to the bank.

Q. First went to the bank? A. Yes.

Q. What did you go to the bank for?

A. Well, because instead of Mr. Vawter Parker making the checks, the refunds to us, he made them to Mr. Abraham. I didn't want to take them back to our bank until I had them in our name.

Q. Oh, you went to the bank and then you went to his office? A. Yes.

Q. Just tell us what he did there about telling you about this [1478] statement by Mr. Winans?

A. Well, first I had to pay him. I didn't have a check with me that day for some reason, and so I paid him in cash, and either he or the girl gave me a receipt, and then when we got all through with that, he asked me to come in to his office, and I thought I was all through. I went in with him. I don't recall, I don't think I sat down. I don't believe he did. Then he just told me about this. He said he thought it was a technicality and it was very unimportant.

Q. Well, I don't know that you have heard all this testimony about that White truck on which Ellis had worked. I don't know, is there anything you could add to what has been said already?

A. Well, it seems like it has a lot of background I don't know anything about, but I did pay Mr. Heider for the truck, and he gave me the titles to

(Testimony of Lois Parker.)

it, as I recall, and I do recall being up to Ellis' garage and talking with him, and he just voluntarily told me when I said we had bought the truck, he just voluntarily told, he says, "Why, you can't have that truck. I have got all this money against it," or something, and I knew nothing about that.

Q. He explained to you, then, all the money that he claimed to have against it? A. Yes.

Q. Then you didn't go there to get the truck, did you? A. No. [1479]

Q. How did you happen to go there?

A. Oh, I think I was just going through Willamina. I don't remember what the reason was, maybe to see what, whether it was there, to look at it at the time. I don't know why. Maybe to see if it had a license, or something. I don't know, but when I got there, why, he told me this long story about it.

Q. Now, if there is no objection, I will approach the next subject a little differently, and if there is anybody has objection, I will do it in the usual way.

Do you recall being at the meeting of the Board of Directors of the Multnomah Plywood on August 20th discussing the sale of this timber?

A. Yes.

Q. Do you recall being up in Mr. Bledsoe's office with Mr. Parker and Mr. Smith discussing the same thing? A. Yes.

Q. Generally speaking, would you say that the conversations that took place at those places were as have been testified by Mr. Parker and Mr. Smith?

(Testimony of Lois Parker.)

A. Why, I believe it is just exactly.

Mr. Jaureguy: If anybody else wants to, they may cross-examine on those subjects, of course. I think that is all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan: [1480]

Q. When you purchased this White truck from Mr. Heider, did Mr. Heider have a certificate of title?

A. I think he did, gave them to me then.

Q. In his possession? A. Yes.

Q. Was the certificate of title in the name of Walt Stegmann or of Otto Heider?

A. I just never paid any attention. I don't know.

Q. But he had a certificate of title in his possession?

A. Yes, I know it was on a White truck and trailer, I mean whatever trailer that was that went with it.

Q. And that was the truck that you purchased?

A. Yes.

Q. Did Mr. Stegmann bring over a copy of a deed on the night of the 10th of September, September 10th? A. Yes, he did.

Q. Bring it over to Mr. Abraham's office?

A. Yes, he did.

Q. Do you remember what he said? Did he bring

(Testimony of Lois Parker.)

it and give it to you, or did he give it to Mr. Abraham?

A. No, he gave it to me, said he was all through now.

Q. Gave it to you, said he was all through. Did he make any mention of a description or record of the reserved area?

A. I think he just said, "Finally we are through with it," or something. He didn't explain it to me, said, "It is right as far as I know." [1481]

Q. Where did he explain it to you, in the inner office?

A. No, I was sitting in the outer office waiting for him to bring it because Mr. Abraham was busy, and so I waited for him in the outer office.

Q. He brought it over to you and handed it over to you? A. Mr. Stegmann did.

Q. Yes, to keep? A. Yes.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Krause:

Q. Who were the grantees you were considering you might want to put into this deed from Winans while you were up there discussing the matter with Mr. Abraham?

A. We were still thinking of our son, but we had talked to Mr. Ferris then, and he said that if we were going to sell this property, it probably was not too practical to do that and try to create a trust for him.

(Testimony of Lois Parker.)

Q. Mr. Ferris had told you that a long time before this deal was closed?

A. Yes, that is true.

Q. So, therefore, you were not considering the son any more?

A. Well, we still considered it. You see, we live in Washington. There is a community property law there, and we often put some property in my name, some property in my husband's name, and [1482] occasionally we put it in our trade name, and we had not just decided. We had to discuss it further.

Q. Occasionally you would put it in the name of the Associated Engineers?

A. That is right.

Q. And in Phillips Construction Company?

A. No, we have never used that name.

Q. Well, now, at any rate, while you were up there then and talking to Mr. Abraham, you had not made up your mind as to whether it would be put into Mr. Parker's name, your name, the son's name or a combination?

A. Well, I would say that when I was at Mr. Abraham's office, it was very late in the evening and he was anxious to leave, so I don't think we discussed that very fully at any time, but that was in my mind, and I did tell him we would definitely decide that night.

Q. At any rate, up to that night nobody had told anybody who the grantee was supposed to be?

A. As far as I know, they had not.

(Testimony of Lois Parker.)

Q. Well, you and Mr. Parker were the only ones that could have told anybody.

A. I couldn't have ever told Mr. Winans at any time because I never did see him.

Q. No, and so far as you know, Mr. Parker had no dealings with Mr. Abraham? [1483]

A. So far as I know, he had not, not at this—not on this transaction.

Q. On this transaction, yes.

A. No, I don't think so.

Q. Well, now, on that day, that was the 10th of September, wasn't it, that Monday?

A. On a Monday, yes.

Q. The day before you got the deed?

A. I believe so.

Q. At that time were you still dickering with the Multnomah Plywood, or had they already turned the deal down?

A. No, I don't think it had been rejected at that time.

Q. You don't think they had rejected it?

A. I don't believe so.

Q. And a few days later you were dickering with some other outfit, or showing the property to them?

A. Yes, that is true.

Q. To try to sell it?

A. That is true.

Q. So, apparently you always had in mind that you were going to sell this property right from the time that you first acquired any interest in it?

A. Oh, we always had that thought that we would

(Testimony of Lois Parker.)

sell it, or we might hold it. It is usually the younger timber that we hold.

Q. Well, on the 13th you got the assignment of the option, and [1484] on the 14th Mr. Parker was already talking to somebody about buying it, wasn't he? A. Certainly.

Q. But you say that you were thinking either of selling it or of holding it?

A. If you want to know about the trust, we didn't know it made any difference whether we sold it or held it. As far as the trust, I mean, there is either timber or there is money for the trust.

Q. But it certainly had some bearing upon putting the title to the property in the name of a minor when you had every intention of trying to sell it immediately, didn't it?

A. Oh, I would not say that. I don't know why it would matter.

Q. Mr. Ferris told you that you would have trouble if you put the title in a minor?

A. No, he didn't say we would have trouble. He said it was not very practical.

Q. You thought that a minor would be able to sign a deed all right and transfer the title to the property?

A. Well, my understanding is that perhaps a guardian or parent might have to sign for it, but I think they could hold property.

Q. You thought a guardian would then be acting for the boy?

(Testimony of Lois Parker.)

A. Why, I believe it is to be together. I really don't know the legal points of it, Mr. Krause.

Q. When did you have this conference with Mr. Parker that finally [1485] led to the decision that Chet L. Parker should be the grantee in the deed?

A. Well, I think that we decided that the night that I went home after I saw Mr. Abraham.

Q. Well, upon that Monday night, did you drive back to Washington?

A. No, I believe we were staying at the Oregon Motor Hotel.

Q. Oregon Motor Hotel. That was the night of the 10th of September? A. I believe so.

Q. Then the first time you told Mr. Abraham as to who was to be the grantee was after he came back from Vawter Parker's office with the deed?

A. That is true.

Q. Did you say that you made any of these entries in the diary, or were they all made by Mr. Parker? A. No, I made some of them.

Q. Even though you explained that before that these minutes of the 11th where it states that you left or just says, "Left Hood River to be at Abraham's at nine a.m.," that refers to yourself?

A. Yes, I think that was a misstatement. I think that was The Dalles. I am positive it was. I think it should say, "Left The Dalles to be at Abraham's office."

Q. The minutes on the 10th of September do not show where you stopped on that day, but you say that you were at The Dalles? [1486]

(Testimony of Lois Parker.)

A. I don't know that I said where I was on the 9th. My recollection is that we stayed there the night of the 10th, according to the diary.

Q. Well, the night of the 10th, yes.

A. Yes, I believe so.

Q. But the diary does not say that you were at The Dalles on that day?

A. No, the diary says that I went—the reason I think so—mind you, I do not have one here to look at.

Q. Well, you should have one.

A. But my recollection is that I drove from The Dalles.

Q. Could you take Mr. Parker's diary and see whether we can get clear on that point?

A. (Consulting diary): Let's see, this is the month of September?

Q. September 10th.

A. Well, let's see, well, I am thinking—the one that I think should be corrected is on the morning of the 11th.

Q. I think you told us that before.

A. On the 10th do you want to know?

Q. Look at the 10th and see whether it says that you stayed any particular place on that night.

A. There is so much here it is hard to read. Oh, well, my husband says that he was at Dufur working that day, and so I am sure that he worked at Dufur, and I went to Hood River, and then we went back. We didn't like to stay at Hood River. As a general [1487] rule we stayed at The Dalles.

(Testimony of Lois Parker.)

It says that the next day we left for Fifteen Mile Creek, so I am quite sure it was at The Dalles.

Q. Do you know why it is on this particular day it does not say a word where you stopped when you were away from home, and without any exception on every other day when you were away from home it says where you stopped at night?

A. That is not correct. I do not agree to that.

Q. Will you call my attention to one?

A. On the 9th it doesn't say we are at home, but it does not say where we are.

Q. But you were not at home on the 10th?

A. On the 10th?

Q. Yes.

A. Well, I am deducing that we were at The Dalles on that night of the 10th because I remember my husband went to Dufur to do this work. He also went back the next day also on that, the 11th. I said, "Left Hood River to be at Abraham's," but I think it was The Dalles. I almost remember driving down that morning.

Q. Now, on the 11th, your first entry there is that, "We checked records to see if judgments were cleared." Were they are judgments against the property?

A. I haven't any idea. I mean, I am talking about anything that was against the property.

Q. But you wrote in here "judgments."

A. Well, perhaps that is my own wording, Mr. Krause. So far as [1488] I am concerned, judg-

(Testimony of Lois Parker.)

ments or anything against it is something against the property.

Q. You do not make any distinction between mortgages and judgments?

A. Probably not when I am writing in my diary. Maybe if you ask me I could tell the difference.

Q. Now, if you go down in your diary a little further, it says, "Met Mr. Abraham in court house where we recorded deed, then we went to bank and had the checks transferred to Chet's name. \$4,750 for land plus \$105.50 for revenue stamps. Mr. A.,"—that is Abraham, I suppose—"put on too many stamps. Then went to Mr. A's office where I paid him."

What were the excess number of stamps that were put on the deed?

A. Well, I didn't understand about when you pay something that you just put on the right amount, so I had \$125,000 worth of stamps, and I thought Mr. Abraham would count out what he thought was proper, but he didn't count them.

Q. You had \$125,000 worth of stamps?

A. Yes, that was originally what I figured the property would cost us without these other things, and when I gave him the envelope I didn't say to him to put on a hundred thousand dollars. I just supposed he would put on what was proper because I didn't know.

Q. You thought there should only be stamps for a hundred thousand [1489] put on?

A. I wasn't sure. I thought it might be that we

(Testimony of Lois Parker.)

would have to put on stamps for a more amount. I just didn't know about that so when I bought stamps I got enough. I thought he would just automatically put on the right amount because I don't know how to count them.

Q. Did you get stamps for \$125,000, or did you get \$125,000 in revenue stamps?

A. I don't quite know what you mean.

Q. Well, do you know how many revenue stamps were put on the deed finally?

A. No—yes, I do, because I said to Mr. Abraham as we were leaving, I said, “Did you get any stamps back?” He says, “What stamps?” I said, “Well, revenue stamps.” He said, “I put them all on.” So when I told him that, I said, “It was for \$125,000 worth; is that right?” He said, “Well, no, we should have just put on the amount of the sale.” But he had already cancelled them by that time, and they were sticking on there.

Q. What was the amount of the sale for?

A. Well, actually, by the time we all got through with the thing, I have added this up several times, I really can't tell you, but I think finally it was \$95,250 that Mr. Winans got out of it. I think that is the amount. Now, I am not positive.

Q. That was the amount that you thought was the consideration for the sale? [1490]

A. Well, it was supposed to be a hundred thousand, but then some was taken off, and what not, so I don't really know.

(Testimony of Lois Parker.)

Q. You have got it right there in your diary, \$4,750 was taken off for the reserved area.

A. Well, but I only took him a check for \$95,000. He already had it figured, so I haven't yet figured out quite how much money he got out of it. That is what we got back, anyhow.

Q. You got \$4,750 back? A. Yes.

Q. Plus \$105.50 for revenue stamps?

A. Yes.

Q. I want to return to this other matter now. "Mr. A. put on too many stamps." You had how many stamps there with you at the time?

A. Well, I think my husband bought them. I am not positive, but I think he did, and I think that probably he said, or at least I have the idea that there was enough revenue stamps, the post office man figured out for \$125,000 transaction. Now, I didn't count them, and I don't know, but anyway, I had them all in a little envelope that the post office gives you, just a regular post office envelope, and that is the envelope I gave to Mr. Abraham.

Q. Well, your reference in the diary here, then, is to this matter that you put on, or Mr. A. put on stamps covering this \$4,750 as well as what you actually paid for the property? [1491]

A. Apparently he must have put on this \$4,750. He put on all there was, so whatever is on there now you could tell and including—and I had in mind including the option.

Q. Did you tell Mr. Abraham how this price had risen from \$95,000 to \$125,000?

(Testimony of Lois Parker.)

A. Well, yes, I think probably when we talked about the amount of stamps I think I told him that that included the option money, and so I was just curious, I wanted to know for my own benefit how many stamps it took on that, and why Mr. Winans didn't put the stamps on, I don't know.

Q. Why Mr. Winans didn't put them on?

A. Yes, don't people usually put them on deeds that you sell?

Q. Well, if that were the case, why did you have them supply you with the \$125,000 worth of stamps?

A. I don't have any idea, Mr. Krause. I don't know, but I did get a check for this amount from Mr. Vawter Parker, so it must have been Mr. Winans' responsibility to put them on.

Q. Now, you told Mr. Parker then that there had been an additional amount paid for the option?

A. I told Mr. Abraham.

Q. Mr. Abraham, pardon me.

A. Yes, I believe so.

Q. Because Mr. Abraham had only gotten \$105 worth of stamps—I mean money to buy stamps—

A. You mean I told him that because he only got one hundred and [1492] five?

Q. Well, when Mr. Abraham came back with the deed, he came back to you with a deed and a check for \$4,750 and another check for \$105.50, didn't he?

A. Well, I didn't actually see those checks until we went to the bank, but, really, the checks did not

(Testimony of Lois Parker.)

have anything to do with the amount of revenue stamps. It was merely just a mistake on Mr. Abraham's and my part.

Q. Well, I am trying to find out how it was Mr. Abraham's fault when you gave him the envelope with stamps and tell him to put them on the deed.

A. No, no, I said, "Put the right amount on the deed."

Q. Now, on the night of the 11th—I want to call your attention to that again—you recorded that you stayed at the Oregon Motor Hotel?

A. Well, on the 12th it says Oregon Motor Hotel.

Q. Pardon me. Well, I can sure read on the night of the 11th of September, "Staying at Oregon Motor Hotel tonight."

A. Oh, yes, I am sorry, Mr. Krause.

Q. Now, would you like to take a look at your deposition which you gave on the 14th of November, 1952?

The Court: What page, Mr. Krause?

Mr. Krause: First on page 85.

Q. Now, you have in mind, don't you, that you have just told us that the night before you decided that only Chet Parker's name [1493] should be placed in the deed, haven't you?

A. Well, I think it was done on the spur of the moment, Mr. Krause.

Q. Well, didn't you just finish telling us you decided it the night before?

(Testimony of Lois Parker.)

A. Yes, I think I did tell you that.

Q. All right, now, let us take a look at your testimony in the deposition. A. All right.

Q. In the middle of page 85, "Did you tell him whose name to fill in, or did you fill it in?"

"A. No, he filled it in.

"Q. And your husband's name was inserted as the grantee?"

"A. Yes, it was. There wasn't room for both our names."

Is that your answer?

A. Yes, my answer is just the same now as it was then.

Q. Now, let us turn to page 128. Would you read over on page 128 starting in with the first question:

"Q. Why was the name in the deed left in blank when it was being prepared?"

A. (Reading): "I think we were talking with Mr. Ferris about that time having to do with a trust account for our son, and I think there was a discussion about that, but I am not positive as to what it was. As near as I know, that is the reason.

"Q. Then the reason why the name Chet L. Parker was [1494] inserted as grantee in the deed, as you have previously mentioned, was that there was not room for both his name and your name. Could there have been any other reason?"

"A. Mr. Ferris had told us in the meantime in order to set up a trust account—I have forgotten

(Testimony of Lois Parker.)

all the details—but it was impractical if it were something we were going to sell immediately you see, for ourselves, and so in the meantime we just did nothing further about it, and when Mr. Abraham brought the deeds back there was just about room for my husband's name, and here I was with the deed, and it was time to put someone's name in, and I put my husband's name in. Sometimes we had those in our joint names or sometimes it is in mine, and sometimes it is in his, and occasionally we buy something for ourselves."

Q. You gave that answer at the time?

A. Yes, sir, I did.

Q. Now, why did you put Chet L. Parker's name in the deed, or tell Mr. Abraham to do it, on Tuesday morning just at the time, just before the deed was recorded?

A. He never asked me any other time.

Q. Well, that isn't the question. Why did you only put Chet Parker's name in at that time?

A. Well——

Q. You give two different versions here. Now, which one is the correct one?

A. Well, they are both my versions. [1495]

Q. They are both your versions?

A. And as I said here, they are still both my versions..

Q. All right, then, answer once more, then, why was Chet Parker's name inserted?

A. We had talked about it the night before, and my husband is quite indefinite sometimes, and he

(Testimony of Lois Parker.)

said, "It is all right to put in my name or do just as you like about it." And it didn't come up the next day at all, and when Mr. Abraham came back and asked me, I said, "Just put my husband's name in," assumed I had to decide just right there. I didn't give it any thought at all after that.

Q. Then the fact that there was not space for both names had nothing to do with it?

A. It was not until I saw the deed that I knew there was not space for both names. I suppose if it was not in here it was merely supposition on my part.

Q. And apparently it was not decided the night before, then, whether Chet L. Parker's name should be put into that deed?

A. My husband said it was perfectly all right to just put his name in it.

Q. And he also said it was perfectly all right to put your name in?

A. I am sure he would not have cared at all if I had put my name in.

Mr. Krause: I think that is all. [1496]

Cross-Examination

By Mr. Buell:

Q. Mrs. Parker, at the risk of belaboring the point on this revenue stamp question, there wasn't any mistake on either your part or Mr. Abraham's part about putting \$125,000 worth of stamps on that deed, was there?

A. That is what he told me there was, Mr. Buell.

(Testimony of Lois Parker.)

Q. Do you mean to tell us here now that it was purely coincidence that you had \$125,000 worth of stamps on that envelope and gave them to Mr. Abraham to put on the deed, and you didn't have any idea of how many stamps you wanted to put on?

A. No, it is not a coincidence at all. I wanted to have enough stamps. I know we had paid \$125,000 for the property. I gave him the envelope, and I supposed he would put the proper amount on, knowing the proper amount was \$125,000, so far as I knew, and he said he didn't count that. He just supposed that it was the proper amount. It was merely a small detail, and he even offered to give me a letter on that at the time that he had nothing to do with the sale of it at all.

Q. What did he say he would give you the letter on that for?

A. Because he made a mistake, and he didn't count them properly. After all, it was his duty to count the stamps, put them on, and he didn't do it, and he did say he did put on what was in the envelope, and it turned out to be too many.

Q. What kind of a letter? Who would the letter be for? [1497]

A. Well, at the time right now, for instance, and that letter would be good if, for instance, the Internal Revenue would be interested in how much we paid for that property, and, actually, later it would be interested in how much Mr. Winans sold

(Testimony of Lois Parker.)

it for so if, actually if I was considering my own benefit, I would need that \$125,000, but from Mr. Winans' benefit, probably his Internal Revenue probably should have the proper amount. He got the money, and I didn't know which was which.

Q. You are not telling us now that you only paid a total of \$95,000?

A. No, I am not. It cost us that amount of money that Mr. Winans got plus the amount for the option.

Q. Which was the amount that you claimed you paid Mr. Stegmann plus the amount that you claim you paid to Winans, would be the figure that you would use as your cost in determining any profit or loss on the sale of that property; isn't that right?

A. I claimed that amount, I claim that amount as the amount I would take for profit and loss, but the money was paid.

Q. While we are on the question of amount, you and your husband, for the last four years, have become quite familiar with the advantage of long-term capital gains, have you not, in the sales of your timber and equipment?

A. I think people have generally been familiar during any period of time with long-term gains.

Q. I wonder if you could tell us why you and Mr. Parker were so [1498] anxious to make a quick sale of this property?

A. Yes, I can tell you.

Q. Why?

A. Because the money was going to be out for

(Testimony of Lois Parker.)

quite some time, and you would report it on a contract basis.

Q. Well, you knew at that time, did you not, that your income, net income for that year, was approximately \$68,000 and that every thousand dollars over and above that you would pay about 76% in tax to the federal government on your short-term basis, did you not?

A. We don't pay our income tax until the end of the year, Mr. Buell. I had no idea what our net income was.

Q. You knew as you went along the amounts of money you had received for the various properties that you had sold?

A. Why, certainly, I knew the amounts of money.

Q. And you knew—you keep a rough track as you go along, when you complete a deal you make at least a rough estimate of what your profit on it is, do you not?

A. I usually write it on the deposit slip.

Q. You knew by this time in 1951, by the summer of 1951, that you were going to be in a very high tax bracket for that year, didn't you?

A. I certainly didn't. I never know how much are our taxes until Mr. Rich tells me.

Q. Have you ever been in the Parkdale Ranger Station? [1499] A. Yes.

Q. When was that?

A. It was after we received the letter from the Forest Service, and I went up and asked. Now, I

(Testimony of Lois Parker.)

won't say that it was—I will say that it was after Mr. Miller told us that Mr., I believe it is, Holtby, the Ranger's name, that Mr. Holtby had told him that there was a defect in the title. I went up and asked Mr. Holtby just exactly what that circumstance was and why he had not told my husband when he met him on the road and came up to Lost Lake the day that he was with the other men, and his answer was that he didn't know why, he had told the Forest Supervisor in Portland. Whether that is Mr. Cooke or not I don't know. I asked if he had a letter written of the claim telling him about it, or just exactly what the circumstance was that they discovered it, and he just would not give me any answer at all.

Q. Why did you wait until the middle of December to go up to ask them about that?

A. Well, it just may have been that I was curious about it.

Q. Did you go up alone, or with Mr. Parker?

A. As I recall, it was in the winter time. I mean, up there it was because there was ice. I don't recall, I think I went alone.

Q. I wonder if I could have the Exhibit 123, please?

This title insurance report is the one you say you gave to Mr. Abraham and asked him to take it to the court house and find out whether or not those various exceptions had been taken care [1500] of?

A. I didn't get him to take it into the court

(Testimony of Lois Parker.)

house. After we were at the court house, when he was ready to check the mortgage, I gave it to him.

Q. But you actually gave him the document itself? A. Yes, I did, Mr. Buell.

Q. And this is the document that he had the information to check against while he was in there?

A. That is the very one.

Q. Then I suppose when you were back in his office after the deal had been completed and he was telling you about this technicality, as you have referred to it, that he told you the reason that you didn't have to worry about it was because you had title insurance and that if anything was wrong, why, the title insurance would take care of it?

A. I think that was my remark to him, Mr. Buell, but it apparently was not entered or the title policy would have shown it.

Q. There is no uncertainty in your mind at all but what you had discussed the question of your title insurance with Mr. Abraham in addition to showing him this preliminary report?

A. I think possibly the only discussion I may have had was at the very beginning, something might have been said about the bargain and sale deed. Then when he told me about the technicality I don't recall discussing any title with him.

Q. Well, now, Mrs. Parker, would you refer to September 11th in [1501] your diary, to the notation that you have put in there that Mr. Abraham says, "That it wasn't important as Title and Trust

(Testimony of Lois Parker.)

Company didn't show anything, it must not be."

A. That is my own thought, that as Title and Trust Company did not show anything, it must not be important.

Q. Well, perhaps I should not have——

A. That isn't what I mean at all, it means that it must not be important because Title and Trust Company did not show anything. Now, he could have said it, too. I don't know. Maybe he agreed with me.

Q. But you put in your diary that that is what he said? A. That isn't the way I read it.

Q. I will read the whole sentence and let it speak for itself. You correct me if I am misreading.

"Mr. Winans told Mr. A. quote 'There is a technicality in the title.' " A. That is right.

Q. "but Mr. A. says it wasn't important——"

A. Period.

Q. "as Title and Trust Company says it wasn't of——"

A. You left out the period after "important."

Mr. Krause: It is not on my copy.

Mr. Buell: There is a period after "a," but I think——

Mr. Jaureguy: We will supply it.

The Witness: I think the "a" is a capital "a." I am not [1502] sure, but I think it is.

My thought is that as Title and Trust Company didn't show anything, it must not be.

(Discussion between counsel off the record.)

Q. (By Mr. Buell): To straighten out this

(Testimony of Lois Parker.)

technicality, would you refer to the language which we have just been reading commencing: "Mr. Winans told Mr. A. quote 'There is a technicality in the title——' " A. Comma.

Q. "Comma, but Mr. A.——" A. Period.

Q. "says it wasn't important."

A. Period.

Q. Then there is a period there and there is the word "as" with a small "a" originally, or at least a small "a" and then a large "a" written over it?

A. Yes.

Q. And then the sentence completes: "Title and Trust Company didn't show anything, it must not be."

When did you make that change of the form of "a"? Was that when you wrote it or at some later date, over that "a"?

A. Well, I said it looks to me as if I had just forgotten to put a capital so I just wrote over it with the pen as I was writing it. I don't know.

Q. On this White Truck, Mrs. Parker, didn't you make a trip down [1503] to Mr. Ellis' garage before you even thought anything about getting the title from Mr. Heider, and asked Mr. Ellis about how much it would cost to get the truck out?

A. I haven't any idea when I was there, Mr. Buell. I don't know when I was there.

Q. Well, I am not trying to get you to pinpoint a date. I am just asking you the question of whether or not prior to the time that you acquired the title to it from Mr. Heider, you went to see Mr.

(Testimony of Lois Parker.)

Ellis and asked him how much it would cost to get the truck out?

A. I think it is rather to the contrary. I think that when I went there Mr. Ellis told me those things, said we couldn't have the truck.

Q. Was that before or after you acquired the title? A. I thought it was afterwards.

Q. Then you are not testifying that what Mr. Ellis stated was incorrect, that you did not go down there and inquire as to how much it would cost to get it out, but you claimed the truck as yours?

A. Well, when he told me this and said I couldn't have it without paying, I asked him how much money it would take to get the truck out of there, but I certainly didn't go there prior to buying the truck and ask him how much money it took.

The Court: I think she has explained that transaction, and I think the whole transaction has come out. I do not see any [1504] useful purpose in going into that truck transaction any more.

Mr. Buell: All right, your Honor, I will pass it.

There was one point on a little different line that I wanted to ask Mrs. Parker about.

The Court: Go ahead.

Q. (By Mr. Buell): There has been evidence in the case, Mrs. Parker, that Mr. Parker subsequently acquired at least two mortgages on Mr. Stegmann's equipment that had been formerly held by Mr. Heider.

Now, didn't Mr. Parker have some kind of an arrangement whereby he had guaranteed or under-

(Testimony of Lois Parker.)

taken to agree to take up Mr. Stegmann's mortgages if they got in default?

A. We have never agreed to take up anyone's mortgages. The only mortgage of Mr. Stegmann that we ever took up was the one that the First National Bank held, and we did that to protect our second mortgage.

Q. Well, how about the one on the—the mortgage on the Caterpillar or on the tractor that was being hauled by Mr. Stegmann up into Section 7 that fell into the river?

A. I think my husband bought that because of salvage, but there will be made some money on it, I think. I don't know the positive reason, but it certainly had nothing to do with Mr. Stegmann being in arrears, I don't believe.

Q. Now, on this question of you say you would take the property in your name sometimes, Mr. Parker's name sometimes, and your [1505] son's name, and you also have on occasion used a maiden name to acquire timber property, have you not?

A. I did on one occasion, yes.

Q. Is that the only occasion that you have ever done that?

A. Since I have been married it is the only one I remember of.

Q. That was on the property down by the Coast?

A. Yes.

Q. You bought from Mr. and Mrs. Neer?

A. Yes.

(Testimony of Lois Parker.)

Q. Now, the safe deposit records show that a person, I believe Hattie Hutchins, had access to your safety deposit box. Is that your mother?

A. That is my mother.

Q. Did she have an interest in some of the moneys or whatever you had in the box?

A. No, mother had a good deal of mortgages on things, and yet it wasn't really enough to have a box of their own, so she left them there for a time. She has since taken them out.

Q. Now, while we are on the subject of safety deposit boxes, I wonder if you could give us any explanation of your testimony at the time of your deposition that the First National Bank of Mc-Minnville was the only bank in which you had ever had any safety deposit boxes in view of your testimony when you were called here a day or so ago that you had a safety deposit box at the Bank of California? [1506]

A. I had forgotten that one, Mr. Buell. We didn't use it very long. It is not our regular bank.

Q. Just a question of failing to recollect?

A. I believe it is.

Q. Now, the Phillips Construction Company, I believe you stated you never took any title to timber or property in the name of that company?

A. No, I don't believe we ever used that because we didn't file the name.

Q. You thought you were going to engage in some construction business under that name?

A. Yes.

(Testimony of Lois Parker.)

Q. Whereabouts?

A. On some road building. I don't remember the place now.

Q. Was that just about the time that you acquired this Lost Lake property?

A. Well, I don't remember when that was, Mr. Buell.

Q. Well, you had a specific venture in mind, didn't you, when you opened the account?

A. Well, I wouldn't say that we knew that we were going to build a road, for instance, in Tillamook County, but my husband often thinks of these things we will do in the future, and we were just laying plans to do so.

Q. That account was opened in August of 1951 with a hundred thousand dollar deposit; was [1507] it not?

A. I remember a hundred thousand dollar deposit, but I don't remember when it was opened.

Q. Well, prior to 1951 you had never used Oscar Parker's address in McMinnville as your address for mailing bank statements and items such as that, had you?

A. I don't recall. We might have sometimes. If we are going away on a trip and we do not have a caretaker at home to take in the mail, we often give that address and have all our things sent there.

Q. Did you do that prior to 1951?

A. Oh, we have had our mail sent, as I recall, so far back—the first time I specifically recall is

(Testimony of Lois Parker.)

when we went to Alaska in 1944, and we had all our mail and statements sent there.

Q. The record shows that your bank statements on your personal account, or rather the account of just the names Chet L. Parker or Lois Parker were sent to your Vancouver address, and that at the same time that you changed the address for your personal account from your Vancouver to Oscar Parker's that the Phillips Construction Company account was activated, showing as the address Oscar Parker's address.

A. Well, I don't recall what the reason was, Mr. Buell, but there was one, I suppose. Maybe they just didn't change the other one.

Q. Am I correct that you have turned over to Mr. Jaureguy all of the checks that you have for the years 1950 and 1951? [1508]

A. Well, if those are all of the checks that I gave you, that is all there were because there are motel checks that are gone.

Q. But you haven't any idea where the others might be?

A. Well, I thought I looked through very carefully when I sent those up, and we have them segregated in drawers. I am just sure with the exception—I have looked through to try to check on those. I remember specifically their amounts. They seem to be there.

Q. How about the deposit slips?

A. I have not checked them against the state-

(Testimony of Lois Parker.)

ments, and I never looked at them from the time I sent them to you, so I just don't know.

Q. I think the record will show here that there are no deposit slips for the Phillips Construction Company account. You do not have any idea as to where those would be or why they would be grouped separately?

A. Well, I just think that—no, I don't think they ever were. I think the deposit slips were just grouped all together.

Q. I thought that was your testimony that you never used to treat the accounts as separate accounts? A. No, I never did.

Q. For some reason or other, you just had the two accounts and the bank just charged the checks whichever way they——

A. Yes, and I hadn't any idea. In fact, I never thought of that before. [1509]

Q. I think, although I haven't had an opportunity to give a close check, but I think the record will show that there are practically none of the checks charged against the Phillips Construction Company account included in those that you delivered to Mr. Jaureguy, other than the ones that were specifically connected with this transaction, such as the checks to Mr. Winans and the check to Mr. Stegmann.

A. Well, is that account still open yet?

Q. Well, it was open until May, 1951. I don't know whether it is open now or not.

(Testimony of Lois Parker.)

A. Well, I just don't know a thing about it, Mr. Buell.

Q. Those would not be down at Oscar Parker's, would they?

A. Oh, no, I do not have any more checks. I had to use those for my income tax.

Q. Mr. Jaureguy asked you on direct examination if at the time you were over there at Attorney Parker's office on September 11th, whether or not you knew that Mrs. Stegmann was going to have a baby, and you said yes; that is correct, is it not?

A. Well, why do you care?

Q. I was just asking.

A. I am not going to answer that.

Q. Do you recall Mr. Stegmann's testimony that his wife had had a baby on August 17th?

A. (No answer.)

The Court: All right, go ahead. [1510]

Mr. Buell: We would like to offer the diary, which is Exhibit 115, I believe, and 115-A in evidence, your Honor. I don't know if it was received yesterday or not on the questions brought out.

The Court: Any objection?

Mr. Jaureguy: No objection.

The Court: It may be admitted.

(Original diary of the Parkers, together with photostatic copy of entries from September 26, 1951, to October 22, 1951, previously marked Defendants' Exhibits 115 and 115-A, respectively, were received in evidence.)

(Testimony of Lois Parker.)

Mr. Jaureguy: I want to ask the witness a question about it, however, when he is through.

Mr. Buell: Nothing further.

The Court: Go ahead.

Redirect Examination

By Mr. Jaureguy:

Q. Mrs. Parker, this diary that has just been introduced in evidence, do you recall when you turned that over to me?

A. Well, I believe, I don't remember when we first consulted you, but I think it was shortly after that time.

Q. And you first consulted me, you recall, on the 6th of December?

A. I believe it was in December. [1511]

Q. At least it was the same day that you were served with a summons and complaint in this case?

A. Yes, it was that same day.

Q. And your recollection is that you turned it over to me about a week or two later?

A. Well, it was not very long because we gave it to you before we left.

Q. Has it ever since been in my possession, as far as you know?

A. Yes, the original you have had all the time.

Mr. Buell: Just so far as we are concerned, just state the date in the record, Mr. Jaureguy.

Mr. Jaureguy: I would say a week or ten days after the 6th of December. That is all.

(Testimony of Lois Parker.)

Examination by the Court

Q. I would like to ask one or two questions.

Did you get on the 10th a copy of the proposed deed that the Winans were going—or that Ethel Winans intended to execute? A. Yes.

Q. What did you do with that copy?

A. I gave it to Mr. Jaureguy.

Q. Did you on that day I am talking about, on the 10th of September?

A. Oh, I gave it to Mr. Abraham to look at.

Q. Had you looked at it at all? [1512]

A. No, sir, I don't—well, I wish I had it in my hands. I had to give it to him.

Q. Did you read it? A. No.

Q. Prior to that time another form of deed had been prepared, had it not?

A. I had not ever seen another one.

Q. On the previous Saturday had a form of deed been prepared?

A. I didn't see one, and I never heard of one. They didn't submit it to us.

Q. Did you have any discussion with Mr. Abraham as to the form of the deed on the evening or late afternoon of September 10th?

A. I asked him about the kind it was. I told him we were not familiar with a bargain and sale deed.

Q. Did he read it aloud?

A. No, he didn't.

Q. Now, you knew at that time that Miss

(Testimony of Lois Parker.)

Winans would have to sign the deed before—either that evening or early the next morning because Mr. Abraham had made an appointment to pick up the deed about nine o'clock the following—

A. Yes, I knew she had to sign the deed.

Q. Are you acquainted with the fact that the proposed form of deed is one that is issued to a man and not a woman or a couple?

A. Well, no, I didn't know, your Honor.

Q. You have seen a lot of deeds before, haven't you, deeds that [1513] were executed—

A. Well, I think, I think so.

Q. That were delivered to you?

A. I think so.

Q. And when they had your name, they used the form, "To her heirs and assigns"?

A. Yes, it should be if it is correct.

Q. And if there were two parties they would use the word "their"? A. Yes.

Q. In this one they used the singular or a deed to a man?

A. Yes, Mr. Abraham mentioned that to me at the court house. He said that we would have to change it if I didn't do that.

The Court: Any further questions?

Mr. Krause: We have nothing.

Mr. Jaureguy: That is all.

The Court: That is all.

(Witness excused.)

Mr. Jaureguy: I have no more witnesses for the

day, your Honor. I have at least two more, from out of town, both of them. I would say there was one question I was going to ask.

The Court: Go ahead.

Mr. Jaureguy: It is something I know about, if it is all right for me to make a statement. They wanted to know about it, and that is about the time that this trial started she ascertained and called my attention to the fact, or I questioned her [1514] about further checks, and she said there were some further checks down in Medford and that she sent for them and that her mother and son sent them up to them, which I turned over to counsel, and she, of course, had no opportunity to further examine in Medford to decide whether there were any checks there. I thought that should be given.

Now, I have some exhibits I want to offer, the pre-trial exhibits that are numbered. I can just offer now.

The Court: All right:

Mr. Jaureguy: I would like to have the same privilege later that was given the other parties.

The Court: You will get the same privilege as Mr. Strayer and Mr. Krause.

Mr. Jaureguy: And if necessary I will ask——

The Court: And Mr. Ryan, also

Mr. Jaureguy: 101, which is the actual deed which was placed of record with the revenue stamps on it.

The Court: It may be admitted.

(Document referred to, previously marked

Defendants' Exhibit 101 for identification, was received in evidence.)

Mr. Jaureguy: 102, the letter from the United States Department of Agriculture, Forest Service, dated September 27, 1951, addressed to Mr. Chet L. Parker at McMinnville, Oregon, registered mail, return receipt requested, advising him the Government claims [1515] title to the northeast quarter of the northwest quarter of this particular Section 16.

The Court: It may be admitted.

(Document referred to, previously marked Defendants' Exhibit 102 for identification, was received in evidence.)

Mr. Jaureguy: 105 is a check dated 8-30, but it is possible that something else was written first under the "3," signed by Chet L. Parker, to Title and Trust Company for \$405, and down in the lower left-hand corner it says "Parker" and then I think it is an ampersand——

The Court: What?

Mr. Jaureguy: An ampersand, which is an indication of "and" and "Winans purch. policy."

The Court: 105 is admitted.

(Check referred to, previously marked Defendants' Exhibit 105 for identification, was received in evidence.)

Mr. Jaureguy: 106 is a statement from the Hood River branch of the Title and Trust Company dated August 30, 1951, to Chet L. Parker, giving the de-

tails of the charge for the policy after giving credit for the owner's policy.

The Court: Admitted.

(Document, Order Number HR12-987 of Title and Trust Company dated August 30, 1951, to Chet L. Parker, [1516] Vancouver, Washington, previously marked Defendants' Exhibit 106 for identification, was received in evidence.)

Mr. Jaureguy: Number 107 is a title report originally unsigned, however, but to have been signed by Edwin E. Miller, Assistant Secretary of the Hood River branch of the Title and Trust Company, dated August 15, 1951, addressed to Chet L. Parker.

The Court: Admitted.

(Title report previously marked Defendants' Exhibit 107 for identification received in evidence.)

Mr. Strayer: Is that the original of the carbon?

Mr. Jaureguy: Yes.

108 is a Title and Trust purchaser's title insurance policy dated the 30th of August, 1951.

The Court: Why are you offering that in view of the fact that it is stipulated that it is Exhibit E attached to the——

Mr. Jaureguy: Owner's policy, yes, I withdraw that. Then the owner's policy.

The Court: That is Exhibit F.

Mr. Jaureguy: I will withdraw that, too.

111 is a check from Lois Parker to the First National Bank for \$95,000 dated September 10, 1951.

The Court: It is admitted.

(Check above referred to, previously marked Defendants' [1517] Exhibit 111 for identification, was received in evidence.)

Mr. Jaureguy: 112 is a carbon copy of the letter on the stationery of Marsh and Marsh dated September 25, 1951, addressed to the Title and Trust Company, advising them of a defect or encumbrance in the title of this property, and I ask counsel to state whether they will admit that that was received by Title and Trust?

The Court: Is that the original or is that a carbon?

Mr. Jaureguy: That is a carbon, but they have had the original sometime, surely. I have seen it. At least I think I have.

Mr. Buell: That was received by Title and Trust after Title and Trust had advised Mr. Parker and Mr. Marsh that it would be advisable to give the company a written notice.

The Court: That is not what he is asking. Did you receive the original?

Mr. Buell: Yes.

The Court: Admitted.

(Document referred to, previously marked Defendants' Exhibit 112 for identification, was received in evidence.)

Mr. Jaureguy: I will agree that such sugges-

tion was made. 113 is a carbon copy of a letter from Marsh and Marsh and Dashney, dated November 2, 1951, addressed to Griffith, Phillips & Coughlin, wondering if they couldn't get an answer to their [1518] letter of recent date.

Mr. Buell: That was received.

The Court: It is admitted.

(Letter referred to, previously marked Defendants' Exhibit 113 for identification, was received in evidence.)

Mr. Jaureguy: Counsel says that was received.

The Court: Admitted.

Mr. Jaureguy: Number 118 is the original complaint filed in this case by Title and Trust Company.

The Court: All right, admitted.

(Complaint referred to, previously marked Defendants' Exhibit 118 for identification, was received in evidence.)

Mr. Jaureguy: That is all I have for today, your Honor.

The Court: We will recess until 10:30 Monday morning.

Mr. Jaureguy: I hope your Honor understands that we do not finally rest until all that evidence is in, including the Wardell deposition?

The Court: Yes.

(Thereupon, an adjournment was taken in the above-entitled matter until Monday, February 9, 1953, at 10:30 a.m.) [1519]

Monday, February 9, 1953—10:30 A. M.

(Trial resumed pursuant to adjournment duly had.)

The Court: Mr. Jaureguy, proceed.

OTTO W. HEIDER

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Mr. Heider, where do you live?

A. Sheridan, Oregon.

Q. What is your profession, your occupation and profession?

A. Well, I have two. I am an attorney and farmer.

Q. I beg your pardon?

A. I have two professions. I am an attorney and a farmer.

Q. Attorney and a farmer, and which predominates?

A. Well, I don't know. I think the law business a little bit.

Q. How long have you been a practicing attorney in the State of Oregon? A. 38 years.

Q. How much of that has been at Sheridan?

A. All of it.

Q. All of it. Now, are you acquainted with the defendant, Walter [1520] Stegmann?

(Testimony of Otto W. Heider.)

A. Yes, very well.

Q. How long have you known him?

A. Oh, I think about 10 or 15 years.

Q. Particularly directing your attention to the period of time prior to 1951, or 1951 and prior thereto, did you ever have occasion to have financial transactions with him? A. I did, sir.

Q. Was he ever indebted to you?

A. Yes, sir.

Q. What would be the amounts he would be indebted to you?

A. Well, it would vary. He has been indebted to me as much as ten or fifteen thousand, perhaps as high as twenty thousand.

Q. Could you give us your opinion, and what is your opinion, as to him as a debtor, that is, whether he can be depended on, or whether you are liable to lose a little on your money?

A. Well, I consider him a substantial, good moral risk.

Q. Did he always pay you back?

A. Yes, yes, he did.

Q. Was he on time, or was he slow at times?

A. Oh, he operated on about the same basis as most of the gyppo loggers do. They were not exactly on time, and we didn't require them to be exactly on time. A logger is supposed to have a reasonable grace period, you know. That is the way they operate. [1521]

Q. Do you know the defendant, Chet Parker?

A. Yes, I do.

(Testimony of Otto W. Heider.)

Q. And the defendant, Lois Parker?

A. Yes, I do.

Q. How long have you known them?

A. Well, I think I have known them, I think Lois was born pretty close to Sheridan. I knew their parents. In fact, I guess I have known them about all their lives.

Q. Now, did either or both of them ever have any occasion, in 1950 or thereabouts, to consult with you with respect to Walt Stegmann as a possible recipient of loans from them?

A. Well, I am quite sure they did because I have done some legal work for them and I happened to be probably handy and convenient there, and either Mrs. Parker or Mr. Parker would stop in and we would talk matters over, partly as client and partly as friend.

Q. Did you give them the same views as to Stegmann you have given the Court today?

A. Yes. I have told, I think it was Mrs. Parker that consulted me about Walter, and I told her that I consider him a substantially good moral risk.

Q. And that eventually he would pay off?

A. Yes, yes.

Q. Is that still your opinion of Stegmann?

A. I have no reason to change it.

Q. Now, did you ever sell them the White truck and trailer and [1522] the Walker trailer?

A. Well, I didn't exactly sell it to them. They paid me off on that, as I recall. I wasn't the owner of it; I was the legal owner of it.

Q. You were the legal owner? A. Yes.

(Testimony of Otto W. Heider.)

Q. Did you transfer the title to them?

A. Yes, I did.

Q. I hand you Exhibit 122 and ask you whether that is the check that paid you off?

A. Yes, I am very sure it is.

Q. Thereafter the evidence shows there was a replevin action brought by Chet Parker through Marsh and Marsh, their attorneys. Would you know anything about that?

A. Well, I don't know too much about it, and I think that is probably true. I think I know why that was done.

Q. Will you tell us why?

A. Well, I was City Attorney at that time at Willamina, and I think Ellis was running this, what we call the Richfield Garage, and I didn't want to sue one of the City Councilmen there, and I told them they might have to have someone else, so they paid me off. I says, "I don't think that the Richfield Garage has any real claim against the truck, but they might not realize it voluntarily and you might have to threaten an illegal act of some kind to get possession." I said, "I don't think, I am sure they [1523] do not have"—I think if I recall right, they were claiming a possessory lien on gas and oil, a lot of things of that kind, and I advised Mrs. Parker that they were lienable items, but they might have to threaten, something like that, and, in fact, I had called previously, one time I think I had called Mr. Ellis up. He said, "Well, we got the truck. We are going to keep it until we

(Testimony of Otto W. Heider.)

get our money." I said, "I don't think you can." Then I think I suggested to Lois that she might have to have some attorney threaten or begin action to get possession. I think that was the substance of our conversation.

Mr. Jaureguy: You may take the witness. [1524]

* * *

Cross-Examination

By Mr. Buell:

Q. Mr. Heider, were all of your transactions with Stegmann [1536] straight loans, or were some of them incidental to the purchase by Stegmann of equipment that you owned?

A. Many of them were sometimes incidental with the purchase of equipment that he would have selected some place else, and then I financed it for him.

Q. All of the loans secured?

A. Well, substantially so. I was not particularly anxious about the value of the security, but they were substantially so.

Q. You felt that they were adequately secured?

A. Well, I didn't—just like I told Mr. Ryan there, I didn't see the equipment so I don't know how adequately secured they were, but I had dealt with Mr. Stegmann and I found him a good moral risk, and that was as far as I went.

Q. What interest rate did you generally charge Mr. Stegmann?

A. Oh, it was the usual charge, 5% straight interest.

(Testimony of Otto W. Heider.)

Q. Is that 5% discounted?

A. Yes, that is, a thousand dollars, if you discounted it, why, it would be \$50 for a year, 12 months.

Q. And you discounted in advance?

A. Discounted in advance; that is right.

Q. Well, now, with reference to these various mortgages that Mr. Ryan was questioning you about, is it your testimony that you are satisfied, did you say, in your own mind, that they have all been discharged, one way or the other?

A. One way or the other, by a sell-out or pay-off, something of [1537] that sort, yes. Well, if I owned them they are paid off, anyhow. The ones that I owned are paid off.

Q. In other words, you do not have a record, do you, of the exact manner in which each one of them was paid off?

A. I don't know what you mean. Do you mean cash, or a bank draft or a check or whether he had some buddy he was operating with who came in and made some payments for him? You mean those details? I don't keep records of those details. Whether Richard Roe comes in and pays for him, if he did I gave Stegmann credit. If he said it was Stegmann's money and to charge it to Mr. Stegmann's job, logging operation, I credited Mr. Stegmann.

Q. But, so far as whether or not those were paid up with funds advanced by Mr. Parker or any other

(Testimony of Otto W. Heider.)

person, that is something that you would not know; is that correct?

A. Well, I wasn't particularly interested in that. I was interested in getting the obligation paid. I didn't care particularly in what manner the payment was made.

Q. You had a number of inquiries along the spring of '50, did you not, as to the financial condition of Mr. Stegmann, whether or not it would be worth anyone's while to sue him to attempt to recover?

A. Inquiries from who?

Q. From persons in the Willamina, Sheridan, McMinnville area?

A. Well, different ones that were dealing with him sometimes would inquire of me what my opinion was of him. In fact, I think [1538] the bank did, of what I thought of him as a credit risk, and sometimes, such as Mr. Stegmann would have his logging operations, would not last too long on a particular operation. He would move from one to the other. Sometimes I know that loggers will take an operation, and sometimes they will make money on it. The next one they will go behind. When they do get behind you are likely to get some inquiries that you spoke of.

Q. You have not loaned Mr. Stegmann any money since 1949, have you?

A. Well, I don't remember whether that is the last document there or not, and it may be, I thought it was probably '50. It may be in 1949.

(Testimony of Otto W. Heider.)

Q. Don't you recall that you know a Walter Brown? A. Yes.

Q. A logger in that area? A. I do.

Q. He now lives in the old Arthur place?

A. Yes, I do.

Q. Don't you recall that he inquired of you some time in the spring of 1950 about a thousand dollars that Stegmann owed him on Stegmann's job at the Gopher Valley tract?

A. Yes, I think there was a question there on that, whether Stegmann owed him that money or not. It was a claim—it was rather involved, and I think there is a question there between Stegmann and Walter Brown whether or not Stegmann owed him the money. It seems like there was a question of some scale which [1539] involved—I just got a faint recollection of it—I think Walter Brown did claim that he had the money coming, and I may have contacted Walter about it, and there was some question there on the situation, but just what it was I don't know.

Q. Did you tell Mr. Brown at that time that Stegmann was flat broke and that the Parkers had taken him over, referring to the Parkers, Mr. and Mrs. Chet Parker?

A. Well, I think Stegmann, I think had moved at that time to Vancouver, Washington, although I am not sure, or had moved to McMinnville, one town or the other, and I think Brown consulted me about suing Stegmann on it, and I said, "Well, the first thing to do is to get you two fellows together

(Testimony of Otto W. Heider.)

on what is what, and who owes who." I may have told Mr. Brown that I didn't know of any assets that Mr. Stegmann could have had or did have that could be levied on. I told him I didn't have—after Mr. Stegmann had paid me off I didn't at that time try to keep any further track of him.

Q. Well, were you familiar at that time, in the spring of 1950, with whether or not there was a question of whether the Parkers had taken over Mr. Stegmann's logging operation in Gopher Valley?

A. Was I familiar with the fact that Parkers had taken over?

Q. Yes.

A. What do you mean by taking it over?

Q. Well, that Stegmann was out of the picture insofar as operating the property was concerned and that the Parkers had taken over [1540] his interest in the Arthur timber?

A. Well, now, I didn't know about it, them being interested in the Arthur timber. I thought Stegmann was still operating there in Gopher Valley. I didn't think there was any change in the situation so far as Gopher Valley was concerned. I didn't know there had been any change there. I know the Parkers own some timber up on Square Top, I know that, but I don't think Mr. Stegmann owned any timber up there. I think the Parkers had some there over in Tillamook County.

Q. Well, referring again to the Gopher Valley transaction, do you recall that apparently about

(Testimony of Otto W. Heider.)

May of 1951 you filed an amended complaint in a case in which you represented Mr. O. L. Arthur and for moneys that Mr. Arthur claimed were due him on account of timber taken from the property, and that you joined along with that an assigned claim of Walter Brown for about a thousand dollars?

A. The case was filed in the name of Arthur, was it?

Q. Yes.

A. Yes, and then Arthur subsequently died. I think that is right.

Q. And the moneys that Walt Brown claimed were due him were moneys during the time he claimed had accrued while he was working for Stegmann there at Gopher Valley, weren't they?

A. I believe it happened up there on East Creek or Upper Gopher, yes. [1541]

Q. Didn't you ascertain at that time that Mr. Stegmann had not done any additional logging on his own account since late 1949 or the spring of 1950?

A. I didn't have any occasion to check on him to see what additional logging he was doing. I didn't keep any further track of him.

Q. Referring, then, to the timber that you mentioned on Square Top, that was the area into which that Caterpillar tractor that went over—Stegmann was hauling into that area, was involved in an accident and rolled over a cliff into Clarence Creek or one of those?

(Testimony of Otto W. Heider.)

A. I think out there by the CC Camp somewhere, I think so.

Q. And in that particular transaction there, do you recall that you and Mr. Parker and Mr. Stegmann were the named insureds in the insurance policy covering that tractor?

A. I think there was insurance involved in the transaction, yes.

Q. Now, it has been shown here that the loss was paid by the insurance company covering that tractor by a check payable jointly to Mr. Parker and yourself and Mr. Stegmann, and that subsequently Mr. Parker bought the salvage on that Cat. Are you familiar with what Mr. Stegmann was doing up in that area at that time? That accident occurred May 25, 1950.

A. Well, whether he had a contract to log for Mr. Parker, or whether he was working for Mr. Parker, I don't know. He might have been just gyppo logging for Mr. Parker up there or supervising [1542] for him. I just don't know in what capacity he was operating up there.

Q. You knew that Mr. Parker and Mr. Stegmann had been associated in one way or another for quite some period of time?

A. Well, I knew that Mr. Stegmann had done some logging for Mr. Parker, and I didn't know just what the contract relationship was between them. I don't think I wrote up the contract if they had one. I think Stegmann did certain phases of the logging operation, and there are always several

(Testimony of Otto W. Heider.)

on the operation that are yarding, bucking or hauling. I don't know.

Q. But, insofar as any inquiry that the Parkers might have made of you in 1950 as to Mr. Stegmann's financial condition or responsibility, you knew at that time, didn't you, that they had—or that they knew as much about his financial responsibility as you, didn't you?

A. I never attempted to advise Parkers about his financial condition at all. All I told them was my connections with him had been fair and reasonable and that I considered him a good moral risk. That is as far as I went.

Q. Mr. Heider, I do not think we have ever met. My name is Buell. Do you recall within the last several months receiving a letter from my firm signed by me, requesting information as to the dates and amounts of final payment of these various mortgages that were recorded?

A. I did not receive one from you. I did from Mr. Ryan. [1543] I never received one from you. The only thing I ever received from you, from your firm, was a subpoena.

Q. Well, come to think of it, I was mistaken in that. I believe the inquiry was probably made by Mr. Pottenger of the McMinnville branch of the Title and Trust Company.

A. Well, he stopped in my office one day and asked me a few questions, then left rather hurriedly. That was all.

(Testimony of Otto W. Heider.)

Q. Didn't he ask you to write me a letter advising of the dates and amounts that those——

A. No, I think I told him that most of the mortgages were on record, and he asked me if they were paid. I told them they were paid. He wanted to know if I could give him a list of them. I said, "Well, they are on file. You can pick the list up when you are over at the Clerk's office."

Q. Well, then, you do not recall writing the firm of Griffith, Phillips & Coughlin a letter recently advising that in the summer of 1950 Mr. Stegmann was insolvent?

Mr. Jauregui: I want to object to that as not the best evidence. If they have such a letter, I think it is fair to produce it.

Mr. Ryan: I want to object to that, too, if that is the content of it, as a conclusion.

Mr. Buell: I want to apologize to the Court. As soon as we saw Mr. Heider this morning I started looking for it. I have not been able to put my finger on that. I had the office bring up [1544] what I thought was all of the remaining files down there, and we have not been able to find it. Otherwise I would not have beaten around the bush on that question.

The Witness: May I ask one question, Mr. Buell? What date is that letter that I wrote you?

Mr. Buell: It was dated in about October or November, 1952.

The Witness: That I wrote you a letter that Mr.

(Testimony of Otto W. Heider.)

Stegmann was insolvent? I would like to see the letter. I have no recollection of it.

Mr. Buell: I will have to find it during the noon hour, your Honor.

Mr. Ryan: For the purpose of the record, I move to strike this testimony.

The Court: Well, there is no testimony in there.

Q. (By Mr. Buell): While we are on the point, Mr. Heider, isn't it a fact that Mr. Stegmann was insolvent in the summer of 1950?

Mr. Ryan: Object to that question again as calling for a conclusion of the witness.

The Court: A statement of fact, also; objection overruled.

A. That he was insolvent? I had no knowledge of his insolvency.

Q. (By Mr. Buell): Do you know what assets Mr. Stegmann had in the summer of 1950?

A. Well, I could only answer you this way, that probably the only assets he had was just what is customarily used by a gyppo logger, a yard rack to load the truck, or probably if he still [1545] had his equipment—and I had no opportunity and occasion to check up on it—would be a Cat, yarder, loader, probably a truck.

Q. Probably most of it mortgaged?

A. What?

Q. Most of it mortgaged?

A. Well, it was not mortgaged to me at that time.

Q. But you did know, didn't you, about the

(Testimony of Otto W. Heider.)

existence of a claim of Mr. Ellis for the gas and oil and repairs?

A. Yes, I knew he was making a claim there. I knew he was making a claim, but——

Q. Then there was a claim of Mr. Arthur for about \$800 stumpage?

A. As I understand the Ellis claim you mentioned there, Mr. Stegmann claimed, of course, that some of these obligations there at that Richfield Station were run up by other parties without his authorization or knowledge, that is one reason about the payment of the same, that they would contract prior, without his prior consent, and he didn't find out about it until some time subsequently.

Q. You also knew of the Arthur claim and the claim of Walt Brown?

A. Yes, I knew of those claims.

Q. As a matter of fact, Mr. Heider, you let the case of Mr. Arthur against Stegmann be dismissed for want of prosecution, didn't you?

A. Well, I think the case was not proved or prosecuted for the [1546] reason that Mr. Arthur asked me to hold the matter up. He was carrying on some negotiation about the matter with somebody else here in Portland, and he just asked me to hold the matter in abeyance, and I did.

Q. You would not have let it be dismissed for want of prosecution if you thought there was any reasonable prospect of collecting a judgment against Mr. Stegmann, would you?

A. Well, he was out of the State at the time, or

(Testimony of Otto W. Heider.)

moved to Vancouver or something. I don't know just why the thing lapsed exactly, but at least I didn't press the matter any further.

Q. Than reserving that White truck, as I recall your direct testimony? A. Which truck?

Q. The White truck, the one that Mr. Ellis was claiming some kind of a possessory lien on. You say you very definitely advised the Parkers that Mr. Ellis had possession of the truck and that they might have to at least bring a lawsuit before they could get it?

A. I called Mr. Ellis on the phone and told him I thought he was illegally holding the truck, but he says, "Well, I have still got possession," and I said, "Well, that won't still hold it." I think I told the Parkers that there was a question there whether he would voluntarily surrender possession, but he had no legal right to hold possession.

Q. In other words, at the time that Mr. Parker purchased your [1547] interest in the truck, whether it was legal title or just a security of his, he was definitely advised at that time that Ellis had possession of the truck and was also claiming an interest? A. Oh, Ellis had possession of it.

Q. And you advised Mr. Parker, I think, at the time you sold your interest of it?

A. Yes, I told them that Ellis had contacted me.

(Testimony of Otto W. Heider.)

Examination by the Court

Q. Had you foreclosed on that truck and trailer prior to the time that the Parkers paid off your claim?

A. Well, foreclose—it was there and there was a couple of—it was two or three payments past due on that and I presume that I could have foreclosed in a summary manner, but I considered the equity there as substantial that Mr. Stegmann had, a substantial equity, and I was not doing anything toward foreclosing it. I had not foreclosed, no.

Q. You had not foreclosed?

A. I had not foreclosed.

Q. Then how did you happen to turn over the title, transfer the title to the property to the Parkers?

A. Well, they asked me if I would sell the paper to them, and I was rather glad to do that since Ellis was making a claim on it. I told them that if they wanted to pay the balance I would sign a note and mortgage without recourse and give them the title, [1548] which I did.

Q. Did they know that Stegmann was the beneficial owner?

Mr. Jaureguy: I didn't hear that last question.

The Witness: Did they know if Stegmann was the beneficial owner. Yes, they knew that, and that I was the legal owner, that is right.

The Court: They had not brought an assignment of interest of Stegmann?

(Testimony of Otto W. Heider.)

A. Well, what I think Mrs. Parker brought me, a written authorization to pay off me and signed by Stegmann; that is right.

Q. But, in any event, they knew that Stegmann was the beneficial owner?

A. Oh, yes, yes. I would not say for sure whether they brought me an authorization, but I felt that if Stegmann sent them up there to get papers there was no objection. At least, Stegmann never did make objection on that, but I turned the papers over to the Parkers.

The Court: Mr. Buell, go ahead.

Cross-Examination

(Continued)

By Mr. Buell:

Q. I want to ask one other question on the White truck, Mr. Heider, and that is that the Secretary of State's record here indicated that there was a mortgage or a contract on that truck to one of the Portland banks.

Did you acquire or pay off the—— [1549]

A. I think I paid off one of the Portland banks a small amount. Just what the amount is I don't know, but I think I paid off the bank a small amount.

Q. Was it your understanding that at the time you completed this transaction with the Parkers where they purchased your interest, whatever it was, in that White truck, was it your understanding they were acquiring from you the paper on

(Testimony of Otto W. Heider.)

that truck, that is, a mortgage or the title to the entire truck itself?

A. Well, my recollection is that Stegmann had already signed on both for the truck and trailer on line 1. Then I realized I did not know just whether they were going to sell it back or were helping Stegmann out in paying it off. Whether they were going to operate it themselves or buying the equity I didn't know.

Q.. In other words, your primary concern was just getting your balance taken care of?

A. That is right.

Q. And the rest of it was between Parker and Stegmann? A. That is right.

Q. Referring back a moment to the Caterpillar, or the tractor, I believe it was, an HD-14 that went over the bank, Mr. Parker, I believe, had a second mortgage on that piece of equipment also?

A. He may have. I don't know, I didn't check the records on that. They may have.

Q. Had Mr. Parker ever undertaken to guarantee any of Mr. Stegmann's indebtedness to [1550] you?

A. I never requested him to. That was not necessary.

Mr. Buell: I think that is all, your Honor, except I would like to have the opportunity to check a little further to try to find that letter.

The Court: Mr. Heider wants to go back home.

The Witness: If the Court please, it is agreed

(Testimony of Otto W. Heider.)

if he has such a letter signed by me on my letter, I won't deny the letter.

The Court: I am going to rule that if he has such a letter that it is pertinent. Do they know your signature?

The Witness: I think Mr. Jaureguy does. I think they both do.

Mr. Strayer: I would like to go a step further, your Honor. Just in the event that we do not find the original letter, I wonder if Mr. Heider has a copy of it in his file?

The Witness: I certainly have not. I do not recall such an occasion of Mr. Buell writing me in October, 1950, I believe.

Mr. Buell: 1952.

The Court: Mr. Heider, would you look in your files, and if you have such a letter will you notify Mr. Buell?

The Witness: Yes, I will send it down to him by special delivery.

The Court: No, you do not have to do that. Just put it in an envelope and send it down to [1551] him.

Redirect Examination

By Mr. Jaureguy:

Q. I notice a letter from the Secretary of State's office shows that in November, 1948, that title was in the name of Stegmann with a lien in favor of the First National Bank, and on July 22, 1950,

(Testimony of Otto W. Heider.)

which I think was shortly after the date of this check, two days after the date of the check, it was transferred to Chet Parker as both the registered and the legal owner. Would not that indicate whether Chet Parker was purchasing the entire interest in the truck itself?

A. Let us see the notation there. Which truck are you speaking of here? (Referring to document.)

Well, yes, that indicates that Mr. Parker was the complete owner of the truck.

Q. Would you say you had the right to foreclose that mortgage by selling that truck to Mr. Parker the way you did?

A. Well, yes, I had the right to. It was in default. I did not sell possession. I just sold the documents on the equipment.

The Court: Was the question whether he had the right to?

Mr. Jaureguy: Yes.

The Court: But the witness has previously testified that he didn't.

Mr. Jaureguy: I know, but I called his attention now to this certificate indicating that Parker obtained a legal title.

The Witness: You asked me the question if I had a legal [1552] right, and I think I had a legal right to foreclose, but I didn't foreclose.

Q. You said you didn't foreclose?

A. And I didn't foreclose. That is, I didn't go out and take physical possession of it.

Q. No, I understand, but what I am getting at,

(Testimony of Otto W. Heider.)

I have not gone into great detail with the Parkers on it, but I had understood that they purchased the truck from Mr. Heider.

The Court: Mr. Heider denies that.

Mr. Jaureguy: I understand that, your Honor. I understand that.

The Witness: They purchased my equity of the truck—or, I mean, yes, equity, I presume, but the real owner of the truck was Mr. Stegmann. I sold out and they simply stepped into my shoes by getting the documents and the title. Now, just what is the relationship between Stegmann and Parker, I don't know.

Q. Yes, I think it is straightened out now all right. Now, would you consider it unusual—for a man in Mr. Parker's position in the logging industry to loan money to someone in Mr. Stegmann's position and to just charge him 4% interest?

A. In my country out there around Grand Ronde and in there, why, I saw that very thing done last Friday by Shaw and Wideman because I drew the papers, and they made that kind of a loan to Mr. Beard because they wanted to get logs because it was the purpose of the loan just [1553] like——

Q. Are loans at that rate of interest unusual?

A. Not unusual when some operator or sawmill is getting the logs, or where the transaction is particularly advantageous to the party advancing the money, that rate is not unusual.

(Testimony of Otto W. Heider.)

Examination by the Court

Q. You testified that although you took security on all of these loans, that you did not go out and inspect the security? A. That is right.

Q. However, from your long experience in loaning money, didn't you have a pretty good idea of what the value of certain types of equipment was?

A. Yes.

Q. If a man had an HD-14 or a TD-18, you knew approximately what the value of that equipment was? A. That is right.

Q. So you did not really need to go out and take an actual physical inspection of it?

A. No, I felt that I didn't.

Q. When you loaned money, was there any correlation between the amount of the security and the amount of your loan? A. Yes, there was.

Q. About what was the ratio?

A. The ratio was to loan about two-thirds of what you consider the reasonable market value of the equipment.

The Court: That is all. [1554]

Mr. Jaureguy: That is all.

Mr. Buell: I finally found it, your Honor. I would like to have it marked for identification.

(Letter from Otto W. Heider dated November 26, 1952, to Messrs. Griffith, Phillips & Coughlin, Portland, Oregon, together with carbon copy of letter of November 24, 1952, addressed to Mr. Otto Heider, Sheridan, Oregon,

(Testimony of Otto W. Heider.)

from Griffith, Phillips & Coughlin, marked Plaintiff's Exhibit 92 for identification.)

Cross-Examination

(Continued)

By Mr. Buell:

Q. Would you examine Exhibit 92, Mr. Heider?

A. Would I do what?

Q. Examine it and see if you can identify that signature?

A. Yes, that came from my office.

Q. Is that your signature or stamp?

A. Well, it is a rubber stamp that Mrs. Lawrence uses, same thing as my original signature.

Q. Do you recall dictating the letter?

A. Yes, I recall dictating it.

The Court: Show it to Mr. Ryan.

The Witness: Yes, that is mine.

If the Court please, may I ask Mr. Buell if he has got a copy [1555] of the letter that he wrote me?

Mr. Buell: No, I am sorry I do not. As the letter indicated, I was mistaken and it was not I that wrote you. It was Title and Trust Company that wrote you inquiring.

The Witness: Oh, Title and Trust Company. Mr. Ryan, who is the letter addressed to?

Mr. Ryan: Messrs. Griffith, Phillips & Coughlin, Electric Building, Portland 5, Oregon.

Mr. Buell: We will offer it in evidence, your Honor.

(Testimony of Otto W. Heider.)

Mr. Ryan: I object to the entry of this, your Honor, without a proper foundation regarding his knowledge of the subject matter thereof, leading to a conclusion.

The Court: Prior inconsistent statements. Do you want to join in the objection, Mr. Jaureguy?

Mr. Jaureguy: No, I think it is admissible under the circumstances.

The Court: I will overrule your objection. It may be admitted.

(Documents referred to, previously marked Plaintiff's Exhibit 92 for identification, were received in evidence.)

Mr. Buell: We have nothing further, your Honor.

Mr. Jaureguy: That is all.

The Court: Thank you, Mr. Heider. You are excused from further attendance at the trial. [1556]

Mr. Ryan: Your Honor, I have another question of Mr. Heider.

The Court: Very well.

Cross-Examination
(Continued)

By Mr. Ryan:

Q. With regard to the Arthur matter which you have testified to, was there a dispute arising between Mr. Stegmann and Mr. Arthur that you recall?

A. I think there was a dispute on both the claims, both the Brown and Arthur claims. They

(Testimony of Otto W. Heider.)

were involved, and that involvement is quite considerable, and I have to get a statement in my office files, and if I knew I was going to be examined on that I could have brought it down, but I have the statement of the involvement in my office file, and just what the dispute was between them, it is something on the scale and a fire got in there and some of the logs that they claimed were delivered and some were not delivered, and it was quite an involved matter.

Q. Now, your initial testimony was that Mr. Arthur asked you to hold that on the proceeding?

A. Hold it in abeyance while he was doing something, checking on it.

Q. Is that the extent, or the last time you heard from Mr. Arthur on the matter?

A. In the meantime, I think, he died.

Q. So it is now your testimony that the reason you went no further was simply because Mr. Arthur asked you to hold off on the [1557] matter?

A. At the time it simply was held in abeyance. Nothing further was done.

Q. You have read this letter submitted with reference to Mr. Stegmann's financial condition?

A. Yes.

Q. Since that time you have also had opportunities to review your files with regard to Mr. Stegmann?

A. Yes.

Q. Have you anything to add in addition to that? Do you have any additional statement to make regarding it?

(Testimony of Otto W. Heider.)

A. I do not have Mr. Buell's letter that he wrote to me. Evidently Mr. Buell wrote me a letter or answer to the letter of Title and Trust Company or he sent me one that Title and Trust Company sent him that Mr. Buell forwarded to me, apparently. I think this is right, my statement there, but they were probably paid out by other parties, including one Mr. Parker paid me.

Of course, in 1950 I was not too familiar with Mr. Stegmann's condition there, but I think I recall now that whether he had any equipment—I doubt if he had very much equipment there in late 1950.

Q. Was that——

A. This was this letter. He was on an operation, you know, whether this was the Brown or Arthur operation or not, but it was some operation, and this might have reference to that operation [1558] that he had paid too much for stumpage and his overhead was so much that he did probably become insolvent as lots of loggers do. One year they are doing well and the next year they are broke. I think that is true of mostly all logging gyppo operators. Sometimes they are in clover to their neck and the next time they are involved in financial difficulties. That seems to be the history of the logging industry.

Q. That is the extent of your explanation with regard to the statement of 1949; is that right?

A. That would be it, and Mr. Stegmann and I had known in many cases. The next year his credit

(Testimony of Otto W. Heider.)

rating would be okay, hit a good piece of timber, and the next year he would be down.

Q. Were you aware that there was a fire on that Arthur property, on the Murphy-Nelson piece?

A. Yes, I knew about the fire, a bad fire.

Q. Now, your testimony with regard to Arthur's paying him out, does that refer to your testimony here this morning?

A. That is in regard to Mr. Stegmann paid out. Then I think there was a deal where Mr. Stegmann traded out or sold somebody else a piece of equipment, somebody else bought my note.

Q. In other words, that payment was for the compensation of the mortgagee for money that was paid out on the loan?

A. After he sold it to other parties, traded it off, then in the first instance I was paid off.

Q. And the reason for that sale is that the Parkers made the [1559] sale to third persons?

A. I don't think I ever inquired as to the reason of the sale. I don't think I——

Q. Do you have any idea of the balance—the amount paid in by Mr. Stegmann on that White truck at the time it was transferred?

A. Well, you mean how much Parkers paid me?

Q. No, how much Stegmann had paid him?

A. I think Stegmann had paid over \$2,000 on it prior to the time that Mr. and Mrs. Parker paid me off.

Mr. Ryan: That is all.

The Court: Any further questions?

(Testimony of Otto W. Heider.)

That is all, Mr. Heider.

(Witness excused.)

The Court: Recess until 1:30.

(Noon recess taken.) [1560]

Afternoon Session—1:30 P.M.

(Trial resumed.)

MYRON E. PARKER

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Myron Parker? A. Yes.

Q. And are you the son of Chet and Lois Parker? A. Yes.

Q. You have been staying down at Medford the last few weeks or so? A. Yes.

Q. Your home is regularly at Vancouver, is it?

A. Yes, it is.

Q. Will you tell us how old you are?

A. Sixteen.

Q. Sixteen. Do you recall any trips that you took up to Hood River to Lost Lake in August and September, 1951? A. A few.

Q. Do you recall about the middle of August at your father's request, going into the office of the

(Testimony of Myron E. Parker.)

title company there in [1561] Hood River about the middle of August, 1951?

A. Yes, it seems that I do.

Q. Just tell us about that, will you?

A. Well, I remember the time he sent me in to talk to the man in there about sending a title policy or some kind of—I don't know what it was, I don't know anything about it—to Portland. I went in there. I know a secretary or somebody was in there, and I asked for the man, and she said he was not there, would be back pretty soon, and I walked up the street——

Q. Did you tell her what you wanted?

A. No, I didn't; I don't think I did.

Q. You do not think you did? A. No.

Q. Then what did you do?

A. And was going up the street, and I saw this man.

Q. How did you know it was this man?

A. I didn't. I was just taking a wild guess. I asked him if he was the man of the Title and Trust Company, and he said yes, he was, and so I briefly told him to send the papers to Portland, and we would pick them up there.

Q. Did you tell him who it was, or who you were? A. Yes, yes.

Q. Or, I mean, who it was that sent you or anything?

A. Yes, well, I don't know. I told him my name, yes, and I imagine that he presumed that I was Chet Parker's boy. [1562]

(Testimony of Myron E. Parker.)

Q. You told him the name, Chet Parker?

A. Yes.

Q. Chet Parker wanted——

A. Yes, the papers sent to Portland.

Q. The title report or whatever it was sent to Portland? A. Yes.

Q. You say you just took a chance that that was the man from the Title and Trust Company?

A. That is right.

Q. Did you have any more clues than that that he was the man?

A. Oh, I don't know. I guess maybe you can pick out an office man. It is just something, you know, I guess.

Q. Did he have a brief case, or anything?

A. Yes, he had some papers with him. I don't know whether he had a brief case or not. I can't remember, but, well, he looked like an office man. He was walking that way, and he was close to the office. I thought it wouldn't hurt to ask him.

Q. Then do you recall being up to Lost Lake a little more than two weeks later?

A. About the 31st of August.

Q. When your father was there, and there were some other men there?

A. Well, yes, I remember——

Q. Who were there besides your father; do you remember?

A. I remember once it was Paul Winans and his brother. I think [1563] his name is Ross, and

(Testimony of Myron E. Parker.)

Walt Stegmann and myself and my father, and other than that I don't know.

Q. What was being done that day; did you know?

A. Well, I was cutting a little brush for Mr. Stegmann, and he was running some lines around the lake there, and Mr. Winans.

Q. What were you doing particularly?

A. Just cutting brush, doing whatever Mr. Stegmann told me.

Q. Then you got around with Ross Winans, did you?

A. Yes, I was.

Q. You made a deal with him that day, did you?

A. Yes, I talked to him about hunting and fishing, and Mr. Winans gave me a bear hide, and we just talked. I like to hunt and fish a lot, and so does Mr. Winans, and we had quite a bit in general.

Q. Did you see your father talking to Paul Winans?

A. Yes, I remember they had quite an argument.

Q. Where were they when they had the argument?

A. Well, they were — there is a creek runs through the swamp. They were up there standing on the bridge, or by the bridge, in there close, as I remember, and that is about all I know where they were at.

Q. Did you hear anything about the argument on what it was about?

A. Well, I heard Dad say that he thought, I guess, that he wanted the timber, and I guess that

(Testimony of Myron E. Parker.)

Winans went in the direction where there was a little timber, and he was maybe a little [1564] perturbed about that, and that is about just the general—that was the general thing they were talking about and arguing about. Other than that, I don't know. There might have been other details.

Q. Do you know about how long they were there arguing?

A. Oh, quite a while, I guess. I don't know.

Mr. Jaureguy: You may take the witness.

Cross-Examination

By Mr. Ryan:

Q. Was Mr. Stegmann up there with you? You have testified on the day you recall him?

A. Yes.

Q. You said you were cutting brush. What was he doing?

A. He was running lines.

Q. He was running lines?

A. Yes.

Q. Was he present at the time this conversation was taking place between your dad and Mr. Winans, Paul Winans?

A. Well, I don't know. I don't remember. We were, well, just there. I just don't know.

Q. You were all up in the area there at the same time?

A. Well, we were in that general area.

Mr. Ryan: That is all the questions I have.

(Testimony of Myron E. Parker.)

Cross-Examination

By Mr. Krause:

Q. The day you went to the title company in Hood River to tell [1565] them about sending this report to Portland, where was your father?

A. Well, he was in town there because I know I couldn't drive. He would have been in town.

Q. He was in Hood River; is that right?

A. Yes, he must have been.

Q. Was your mother there, too?

A. No, mother was not there.

Q. What time of the day was it, about, when you went to the title company?

A. I don't know. It has been a long time ago, and I can't remember that.

Q. Had your father parked his car somewhere in Hood River and where you were going to meet him again after you went to the title company's office?

A. I just don't know.

Q. About how long were you away from him on that occasion?

A. Well, I don't know that either.

Q. Well, did he drive you to the title company's office?

A. He could have.

Q. And let you off in front of the office?

A. Well, he could have, but I just don't know.

Q. You don't know whether he let you off in some other part of Hood River and you walked over to the title company's office?

A. That is possible. [1566]

(Testimony of Myron E. Parker.)

Q. But you don't have any recollection of it?

A. No, I do not.

Q. Of what happened? A. No.

Q. You do not know how long it was between the time that he sent you to the title company's office and that you saw him again?

A. Well, I would have no reason to know. I mean, it would not have been probably all day.

Q. He didn't leave you there in Hood River by yourself all day? A. Oh, no.

Q. You are quite sure of that? You do not know what business, if any, he was attending to while you went to the title office? A. No, I do not.

Q. What were you told to do at the title office?

A. Well, I often run errands for him, and I guess maybe he figured I could do it.

Q. Well, I am sure he did, but what did he tell you to do?

A. He told me to tell the man to send the papers to Portland, and we would pick them up.

Q. Just to send some papers to Portland?

A. Yes, he didn't specify which papers.

Q. He told you, of course, to tell him whose papers they were? A. Yes.

Q. Had you been in the title company's office before? A. No. [1567]

Q. That was the first time you were ever there?

A. Yes.

Q. This manager of the title office, you had never seen before? A. No.

Q. Before you met him on the street?

(Testimony of Myron E. Parker.)

A. No, I don't believe I had.

Q. At any rate, you finally identified him and asked him to send the Parker papers to Portland?

A. Yes.

Q. Did you pick them up at the Portland office later? A. I don't remember.

Q. You do not know whether you did or didn't?

A. No.

Q. Did you drive back to Portland that day?

A. I couldn't say that, either.

Q. You do not know where you went from Hood River? A. No, I don't.

Q. You did not go up to Lost Lake on that day, though? A. Well, I don't know.

Q. You think that that was later that you did make this one trip to Lost Lake?

A. Yes, it was.

Q. You think it was later? A. Yes.

Q. About how much later? [1568]

A. Oh, I don't know. I really couldn't say because——

Q. You do not remember whether it was a couple of days or a couple of weeks?

A. Oh, towards maybe a little more than a couple of days, maybe a little less, maybe a little more than two weeks.

Q. You went up to Lost Lake quite a number of times that summer, though, didn't you?

A. A few times.

Q. How many would you say?

A. I haven't any idea.

(Testimony of Myron E. Parker.)

Q. Well, now, you know—were you up there two or three or four times, or ten or fifteen times during the summer of 1951?

A. Well, I don't know. I didn't count them.

Q. Don't you remember whether it is closer to two, three or four or ten or fifteen?

A. Well, let us even it up and say five.

Q. You think about five?

A. That is purely a guess.

Q. Did you ever stay up there overnight at Lost Lake? A. Yes, I think I did, yes.

Q. Once? A. Once.

Q. When you were up on these other trips, Myron, did you go on to this property that you were on the day that you were doing the [1569] survey? A. Yes, I think I did.

Q. Whenever you went up there, I suppose you did go on that property? A. In that vicinity.

Q. In the vicinity of the property. You do not know what sort of line Stegmann was trying to run?

A. I didn't pay any attention to it. I didn't have any reason to. All I did was what he told me to do.

Q. They had not told you what they were trying to survey up there? A. No.

Q. Have you been on any other surveying trips, Myron?

A. Oh, not actually surveying. I don't know anything about it. I have cruised in some of our cruises, and things.

(Testimony of Myron E. Parker.)

Q. Have you been on cruises and also on surveying trips?

A. Well, I went one time and camped with our cruiser, but otherwise, no.

Q. Myron, what is it causes you to remember this argument between your father and Paul Winans?

A. Well, probably the thing that made me remember it was father very seldom ever argued with anybody. I remember that is why I remembered it.

Q. Well, except for that argument, when did you hear him in an argument prior to that time, and with whom was it?

A. I don't know; I don't remember. [1570]

Q. Do you ever remember his having an argument with anybody since that time?

A. Oh, I can't say as I have.

Q. That is the only argument that you can remember now that you heard your father in?

A. Well, he has probably been in arguments, but when he has been in arguments, I have not been around, I guess, because, like I say, he very seldom ever argues.

Q. Yes, well, of course, you couldn't hear it unless you were there. A. That is right.

Q. But you do not recall of any other case at all where you have ever heard your father in an argument with another man?

A. Well, no, not like that for a long time.

Q. When did anybody first ask you, Myron,

(Testimony of Myron E. Parker.)

whether you remembered any such argument up there after the thing happened?

A. Well, the first person that has mentioned it—let's see, I guess this morning Mr. Jaureguy asked me something about it.

Q. Is that the first time anybody mentioned this argument since you were up there on that property?

A. Yes.

Q. The first time? A. And yourself here.

Mr. Jaureguy: That is the second time.

Q. (By Mr. Krause): I am the second time, then. I am talking [1571] about the first time, Myron. So the first time anybody asked you about whether you heard that argument was this morning when Mr. Jaureguy asked you? A. Yes.

Q. Did you have any difficulty remembering it at that time, Myron?

A. Well, I thought about it a little bit and, like I say, it is outstanding.

Q. They didn't hit each other, did they?

A. No, there was no blows.

Q. Threatened to hit each other? A. No.

Q. They were just having an argument, and it was quite a heated argument?

A. Well, it seemed so.

Q. Nobody else in the whole party had any argument with anybody else that day, did they?

A. Not that I know of.

Q. Mr. Stegmann and Mr. Winans didn't have any argument about anything?

A. Not that I know of.

(Testimony of Myron E. Parker.)

Q. And your father and Mr. Stegmann didn't have any? A. I don't know.

Mr. Krause: I think that is all. [1572]

Cross-Examination

By Mr. Strayer:

Q. How old are you, Myron? A. Please?

Q. How old are you? A. Sixteen.

Q. What was the date of your birth?

A. January 25, 1937.

Q. Nineteen what? A. Thirty-seven.

Q. Then in August of 1951 you would have been 14 years old—15 years old?

A. Well, something like that, I guess.

Q. What were you doing up at Hood River on this date that you went in to the title company?

A. I don't know.

Q. Where had you been?

A. I don't know that either.

Q. How long were you in Hood River that day?

A. Please?

Q. How long were you in Hood River?

A. That day?

Q. Yes. A. Well, I just don't remember.

Q. You don't know whether you got there early in the morning? [1573] A. No, I do not.

Q. Or whether you got there the day before?

A. I really do not.

Q. Or when you left or where you went?

A. I really don't. I had no occasion to remember.

Q. Do you have any recollection of what business

(Testimony of Myron E. Parker.)

your father was on? A. No, I do not.

Q. How were you dressed?

A. Well, I either dress up, or else I am dressed in logger's clothes.

Q. How were you dressed that day?

A. That day, since my mother was not with me, I was probably dressed in logger's clothes.

Q. What kind of clothing was that?

A. Well, levis and wool shirt, and an old hat, shoes, the way I dress.

Q. Do you dress that way when you are going out in the woods? A. Yes.

Q. Well, then, is it your best guess that you were out in the woods that day?

A. Well, I don't know. I dress like that at home.

Q. Oh, you dress that way whether you are going to the woods or not? A. Usually. [1574]

Q. How long has it been since you thought about that visit to the title office from the date that it happened until the present time?

A. Oh, not so long.

Q. How long? A. I really don't know.

Q. Well, have you talked it over with your father and mother, or either one of them?

A. No, I have not. They said that they are in trial.

Q. What is that?

A. They said that they had been having court.

Q. Yes, but you have not been here in court, have you, up until today? A. No.

(Testimony of Myron E. Parker.)

Q. Now, before today, did your father and mother talk with you about this visit to the title company? A. Well, yes, a little bit.

Q. When did that happen?

A. Oh, a couple, three days ago, maybe; maybe the last—I don't know, a day ago.

Q. What did your father and mother say to you about it?

A. Well, they asked me if I remembered being in there.

Q. In where?

A. In the Title and Trust office.

Q. What else did they ask you? [1575]

A. That is all.

Q. That is the only thing they said to you, so you have not since, from the time that it happened in 1951 until today, you have never had occasion to relate the story of just how you went into the title company, how you talked with the girl, and how you went about to find the man; is that right?

A. Well, I might be idly thinking about it, I think, sometimes with things I have done, but otherwise, no.

Q. Did anyone tell you what the testimony of the people from the Title and Trust Company office was? A. No, sir.

Q. You never heard what the testimony of Miss Vose or Mr. Miller was on the subject?

A. No, sir.

Q. Let me see if I have got your testimony

(Testimony of Myron E. Parker.)

straight. You say you went into the title company at your father's request to ask them to send his papers to Portland, right? A. Yes.

Q. You did not know what kind of papers they were going to be? A. No.

Q. And you didn't ask for the papers right there? You didn't ask if they were ready?

A. Yes, let's see, I didn't ask if they were ready.

Q. Well, then, your father must have told you to go to the title company to get his papers, didn't he? [1576]

A. Yes, he said send them to Portland, tell the man to send them to Portland.

Q. He didn't request you to bring the papers, then, if they were ready?

A. Well, yes, it seems that he—I guess if they were ready he wanted me to bring them, but I guess maybe he figured they would not be ready and says to send them to Portland and we would pick them up there.

Q. Well, then, you found out that they were not ready from the girl, did you?

A. Well, I don't know.

Q. How did it happen you went to hunt for Mr. Miller? A. Who is Mr. Miller?

Q. Mr. Miller is the man that you say you went to find. A. Oh, oh.

Q. Why did you go to find him? Why didn't you just tell the girl to send the papers to Portland?

A. Well, as I remember, I asked the girl about

(Testimony of Myron E. Parker.)

it, and she says, "Well, the man will be back pretty soon." And so I figured that that was that, either she didn't know anything about it or I didn't know.

Q. Well, then, you must have gone to find the man to find out if the papers were ready; is that right? A. I figured on coming back.

Q. What is that? [1577]

A. I figured on coming back and seeing the man.

Q. Oh, you left intending to come back? You didn't go to look for the man?

A. No, I didn't go especially to look for the man on the street, no.

Q. How did it happen you found him, then?

A. Well, as I said, the man was walking down the street and had these papers and looked like an office man, and it doesn't hurt to ask.

Q. He had a handful of loose papers and you——

A. No, I don't know whether they were loose or not.

Q. What kind of papers were they?

A. I don't remember.

Q. What do you mean when you say he had some papers?

A. Well, as an office man does, he usually has a brief case with him.

Q. Did this man have a brief case?

A. I don't remember, but it seems that that gave me the indication to think he was the Title and Trust man.

Q. What did you say to him when you saw him?

A. Well, the general thing I asked him was

(Testimony of Myron E. Parker.)

whether the papers were ready, and apparently they were not; and so to send them to Portland, my name was Parker.

Q. Did you give him your father's name, did you?

A. Yes, that would have been the sensible thing to do, which I [1578] think I did.

Q. What is that?

A. That would have been a sensible thing to do, which I did.

Q. But you don't think you told him who you were?

A. Well, I don't know.

Q. Now, on this occasion when you were up there on the property helping with the survey, you worked there all one day, did you?

A. I don't know.

Q. What is that?

A. You mean we were there all day?

Q. Yes.

A. I couldn't say.

Q. Was Mr. Parker there with you, your father?

A. Yes, my father was there.

Q. What was he doing?

A. Well, as near as I can tell, he was just there.

Q. What did you understand the job was that was being done there? What were they trying to accomplish?

A. Well, I don't know, the only reason I was there was I was cutting brush for Mr. Stegmann.

Q. You were what?

A. I was cutting brush for Mr. Stegmann.

Q. Were you sent up there by your father to help him cut the brush?

(Testimony of Myron E. Parker.)

A. Well, I don't know, maybe it was just that I was there, and [1579] I was convenient to cut brush.

Q. Who did you understand was buying this timber?

A. Well, I don't know that, either.

Q. You have no idea of whether it was your father or Mr. Stegmann, or who?

A. That is right; I had no interest.

Q. You heard no discussion there of who was buying the timber?

A. No, I didn't, not that I knew of.

Mr. Strayer: That is all.

Mr. Jaureguy: That is all.

Mr. Krause: I have no questions.

Mr. Ryan: No questions.

The Court: That is all.

(Witness excused.)

The Court: We will recess for ten minutes.

(Recess taken.)

The Court: Mr. Jaureguy?

Mr. Jaureguy: I would like to recall Chet Parker for a few more questions. [1580]

CHET L. PARKER

recalled, testified as follows:

By Mr. Jaureguy:

Q. Since we had our last session of Court, have you, Mr. Parker, had occasion to have your memory refreshed any more with respect to this Jeep business down at McMinnville? A. Yes, I have.

Q. What is your recollection now of some facts that you might have gotten wrong when you testified before?

A. The main thing was that Mr. Colvin, being one of the owners, I dealt with him usually the last part of the deal in most any deal, and he wanted \$550 and I wanted only to pay him \$450, so that was as near as we could get together, and I suggested to him that we go out on the street and flip a coin, and if it came down one way I paid \$550 and if it came down the other way it would be \$450. That seemed to have been one of my more fortunate days because it was \$450.

Q. It came up your way?

A. And I consequently made the deal on \$450.

Q. Did he ever tell you about Walt Stegmann having an earnest money receipt or anything?

A. No, at any time none of those people have ever told me. I have seen him many, many times since then. [1581]

* * *

The Court: Is that your case, Mr. Jaureguy?

Mr. Jaureguy: Of course, I would hate to say I

rest with a lot of reservations, but that is what I would like to do.

In the first place, I understand from counsel that Title and Trust, they are willing to stipulate that in the event the Court finds the defendants are entitled to recover, the defendants, or either of them, is entitled to recover attorneys' fees from the plaintiff, that the Court may fix the amount of attorneys' fees without the necessity of our producing any evidence as to the reasonable value of the services.

Mr. Strayer: That is right, your Honor. [1589]

* * *

BERYL SWAILS

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mr. Swails, you are the manager of the United States National Bank in Sheridan; is that correct? A. Yes, sir. [1593]

* * *

Cross-Examination

By Mr. Buell:

Q. Has Mr. Stegmann applied to your bank for any loans since the U. S. National took over the Sheridan bank? A. Yes, sir.

Q. When was the last time, approximately? Just place it by year, if you can. A. It was in 1949.

(Testimony of Beryl Swails.)

Q. Since that time you have not had any occasion, then, to look into Mr. Stegmann's credit?

A. Not since he paid us out in December.

Mr. Buell: No further questions.

Mr. Jaureguy: No questions.

The Court: Did you testify that he applied for credit in [1599] 1949?

The Witness: Yes.

The Court: Will you tell us what action the bank took?

The Witness: Well, we advanced him, we renewed some of the mortgages that were—advanced him more funds.

The Court: He did not have a line of credit with the bank, though, unsecured?

The Witness: No, it was always on a secured basis.

The Court: Any questions?

Mr. Krause: Nothing.

Q. (By Mr. Jaureguy): Could I ask you what additional funds you advanced him in 1949?

A. Well, I don't recall exactly, but I think at one time he had an outstanding loan of \$10,000 as the tops.

Q. During 1949?

A. Yes, 1949. That was the one he paid out in December.

Mr. Ryan: I have no further questions.

Mr. Jaureguy: No questions.

The Court: You are excused.

(Witness excused.) [1600]

WALTER STEGMANN

recalled in his own behalf, having been previously sworn, testified as follows:

Direct Examination

By Mr. Ryan:

Q. Would you hand Mr. Stegmann Exhibit 48 again, if you please?

(Document presented to witness.)

Q. (By Mr. Ryan): Mr. Stegmann, you have that Exhibit 48 there to refresh your memory. Could you turn to the mortgages involving Courtemanche there?

(Letter dated January 17, 1953, from the Courtemanche Acceptance Corporation to Mr. John D. Ryan, marked Defendant Stegmann's Exhibit Number 204 for identification.)

(Documents, satisfactions of chattel mortgages, Nos. 21808 and 19692, dated October 25, 1949, and January 27, 1949, marked Defendant Stegmann's Exhibits 205 and 206, respectively, for identification.)

Q. (By Mr. Ryan): Handing you Exhibit 204 for identification, do you recognize that?

A. Yes, I recognize that.

Q. What is that?

A. That is a letter that I had requested Courtemanche to send Mr. Ryan for satisfaction of contract or mortgage that I had with him. [1601]

Q. Now, you have seen these two mortgages here

(Testimony of Walter Stegmann.)

which are in Exhibit 48, one Number 19692 running to L. A. Courtemanche from yourself and dated January 29, 1949, and another chattel mortgage in here between the same parties, Number 21803—or 8—it isn't entirely clear—dated October 21, 1949. Have you paid Mr. Courtemanche under that?

A. Yes.

Q. You paid those off?

A. Yes, they must have been paid off on or about the date the payments were due.

Q. Have you received satisfactions of those mortgages?

A. Well, only the paper I requested from—he may have given me a receipt for them, paid in full, and then I requested him to send the satisfaction that they were paid to Ryan.

Q. That is to me? A. Yes.

Q. These are the two satisfactions you received, or the papers, as you call them?

A. Yes, they would be.

Q. Those are Exhibits 205 and 206. These are papers which we discussed regarding a stipulation, Mr. Buell.

The Court: Is there any objection?

Mr. Buell: No objection, your Honor.

The Court: They may be admitted.

(Documents previously marked Defendant Stegmann's [1602] Exhibits 204, 205 and 206 for identification were received in evidence.)

Q. (By Mr. Ryan): Mr. Stegmann, would you

(Testimony of Walter Stegmann.)

state to the Court, would this refresh your memory if you look at Exhibit 204, to inform the Court as to the dates upon which those payments were made?

The Court: Has that been admitted in evidence?

Mr. Ryan: Yes, your Honor, it has.

The Court: Does that exhibit show the dates upon it?

Mr. Ryan: Yes, it does. It speaks for itself.

The Court: All right, then, no more testimony.

Q. (By Mr. Ryan): There is an additional mortgage in Exhibit 48 to a man by the name of Bailey. I think it is the last one in the——

A. Yes.

Q. How much is the amount that that mortgage was given for, Mr. Stegmann?

A. Well, it says \$658.25 here.

Q. What was the date of that?

A. That was in February 10, 1950.

Q. Did you ever pay that mortgage to Mr. Bailey?

A. Well, not in cash money, but I did move his Cat. He had a small Cat, and I moved his Cat two or three times, and I also gave him some equipment to log with, which was more than equal to the amount of money that I owed him. [1603]

Q. Was it an understanding between you at that time it would satisfy that indebtedness?

A. That was the understanding between us that that would be payment that he would receive for his payment and which he needed at that time, and he

(Testimony of Walter Stegmann.)

would take that instead of money and then paid it.

Q. Do you know where Mr. Bailey is now?

A. No, I do not. As I understood, he sold his Cat and left and went back East some place. I have tried to locate him and I have not had any luck locating him.

The Court: Anything further?

Mr. Ryan: Nothing further than that, your Honor. Oh, I have some further questions to ask Mr. Stegmann.

Mr. Stegmann, you have testified that you obtained the option from Mr. Winans on August 11th, which was a Friday or Saturday?

A. Well, it was on a Saturday, if that was August 11th, I mean, as it was on Saturday, the day of the week.

Q. You have also testified that you saw Mr. Chet L. Parker in McMinnville on August 12th; is that correct?

A. Well, I think that is correct because August—it was on a Sunday, and I am sure, looking at the calendar, I remember it was August 12th.

Q. Would it have been possible that you might have telephoned Mr. Parker sometime on the morning of the 12th regarding this deal?

A. Well, it is possible that I may have called him, but I don't [1604] recall ever calling him, I mean, because I did see him that day. He was down to my place or his brother's place, which is adjoining my property in McMinnville, and I did see him on that day.

(Testimony of Walter Stegmann.)

Q. If you had called him, would it have been with respect to the loan arrangement?

A. It is possible, if I would have called him, it may have been to tell him that I had issued, or had wrote, a check on this loan arrangement, but I don't remember calling him.

Q. Would you tell the Court just where your house is situated with respect to the house of Oscar Parker? Is it your house or your brother's house?

A. No, it is my house. I think there was some misunderstanding in the depositions that it was my brother's house, but it was my property, me and my wife's at that time, and Mr. Parker's brother, Oscar Parker's property adjoin our back yards, adjoining.

Q. Where was it you met Mr. Parker on this morning; was it on this property?

A. Well, I think I was cutting the lawn or maybe working in the garden, and he was over to his brother's place and near his garage there, which is a few feet, and it was right there either in between on my—he may have been on his brother's property, and come over and said hello.

Q. I mentioned the word "morning"; are you certain of the time of the day on the Sunday, August 12th, that you saw Mr. Parker? [1605]

A. I am not exactly certain of the time of the day, but it was during that day. I would say probably morning or noon. I couldn't say exactly what time it was.

Q. To go back to August 11th, at what time of

(Testimony of Walter Stegmann.)

the day was it that you and Mr. Winans—or approximately when did you and Mr. Winans conclude the deal with regard to him giving you the option?

A. Oh, I don't know the exact time. It would be pretty hard for me. It seems like it may have been in the afternoon, or along towards evening. I am not sure.

Q. Now, there has been some testimony that the question of the title to this property was discussed at that time. Would you tell the Court the extent of your recollection regarding that transaction?

A. How do you mean, the title being discussed?

Q. I mean what would you remember regarding that transaction between yourself and Mr. Paul Winans?

Mr. Strayer: Pardon me, what date?

Mr. Ryan: August 11th.

The Witness: All I can remember happened that we were talking about the option. He was going to give an option on it. I wanted to purchase it, and he was writing it on his typewriter in his little office there, was typing it up, which I think he typed four or five copies probably, or different ones, and eventually he typed up one, and we went to take this description, put it in this option, why, he mentioned that he had a title [1606] policy around there, and he was going to take the description off from that, and he searched around in his big pile of papers there, and he couldn't find it and so he had some tax receipts, and he took the description off

(Testimony of Walter Stegmann.)

from there, and he said that his sister, Ethel Winans, had a deed to it, but he didn't show me that.

Q. Did he show you the deed?

A. No, I think he took the description of the property off from the tax receipts and put them on, that is where he got the description.

Q. Did he ever show you a title insurance property that he mentioned?

A. No, I never did see it. He was not able to locate it. He searched for it, or said he thought it was among them papers. He was looking for that but didn't find that.

Q. Was that the extent of the discussion with respect to title insurance and the deed and the title that was given to you by Mr. Winans?

A. Yes.

Q. On Sunday, you made arrangements to meet Mr. Parker in Hood River on the following Monday or the 13th? A. Yes.

Q. Where did you meet Mr. Parker; do you recall?

A. Well, seems like it was up at a restaurant. It would be on the west edge of Hood River. I think it is on the right side of [1607] the road, I believe. That is where we agreed to meet, there at the restaurant.

Q. Do you remember what car you were driving?

A. Oh, I am just positive just exactly which car I was driving. I did drive, and it is hard to say.

(Testimony of Walter Stegmann.)

I had a Mercury, 4-door sedan, and I had a Buick convertible.

Q. What color was the Buick convertible?

A. It was yellow.

Q. Were they Oregon or Washington licensed cars?

A. They were Oregon license plates on my cars.

Q. Both of them? A. Yes.

Q. What then happened. Did you go directly to the property on Lost Lake?

A. Well, after I met him, yes, I think he drove up in his car, and I drove up in my car, and we drove up to the lake, and—yes, that is the way it was.

Q. You went up to the property and to the lake, then? A. Yes.

Q. What did you show Mr. Parker up there? Did you show him the area, or just exactly how long were you up there with him?

A. Well, it seems like I was not there very long. It may have been an hour or so, but I am not sure. We had to walk in there a little ways, about three-quarters of a mile down this trail, and I showed him approximately where the line was. There [1607-A] was a tag on a tree there, and I showed him that to line his place up there, and I showed him where the line was, and I believe I took him up to a quarter corner, I am not sure. There is an iron stake in the ground with a brass cap on it, and I think I probably told him approximately where I had went when I had looked at the timber and made a rough cruise

(Testimony of Walter Stegmann.)

of it and told him there was probably some nice timber there. After all, I was trying to sell it, and I left.

Q. Had you told him that Paul Winans was the owner of the property at that time?

A. I am sure I had. In fact, I believe that I might have showed him the option or have give him the—or he may have seen the option that I did have on the property.

Q. When you left the premises up there, would that have been around noon or before noon?

A. It must have been right around noon. I am not just sure. It could have been a little after noon, too, that I left up there.

Q. Did you have any understanding with Mr. Parker as to when you were going to see him again?

A. The only understanding I had, that if he liked it and would like to buy the option—that is what he was interested in—if he took it, why, he would like to buy the option, and that is what I wanted to sell, and that he could come over to my place at The Dalles. I told him where I was staying, and if he wanted anything more, why, he could come in and look me up. I told him where I would be. [1608]

Q. Now, when was the next time you saw Mr. Parker?

A. Well, the next time I saw him after leaving the lake property was that evening. I believe it was, I don't remember, just getting dusk or sometime that he went over at my place in The Dalles.

Q. Now, you have heard testimony here during

(Testimony of Walter Stegmann.)

the course of the trial of two gentlemen, the Forest Rangers. I believe their name was Mr. Parrott and Mr. Petersen? A. Yes.

Q. Their testimony is that they thought that on August 13th in the evening about five forty-five they saw a gentleman that looked like you at the Forest Ranger Station in the company of Mr. Parker. Were you at the Forest Ranger Station on that day?

A. Well, I am not positive it was on that day, but I am sure that I was never there with Mr. Parker. I am positive of that.

Q. Would you have had any reason to go there that day?

A. I don't believe I would have had any reason to go there that day.

Q. Had you been there before? A. Yes.

Q. In whose company?

A. I had been there, I believe, twice before, probably. I know one time that I went up there with a Mr. Floyd Marsh.

Q. You heard this testimony regarding your being there with Mr. Parker. Is it your testimony now that you had not been there? [1609]

A. I have never been there at the Forest Ranger's place with Mr. Parker.

Q. Approximately when was the hour of the evening, then, that you did see Mr. Parker on August 13th?

A. August 13th, well, that is pretty hard to say. I just don't remember the exact hour, but I do

(Testimony of Walter Stegmann.)

know it was in the evening, though. It could have been dark, or it may have been getting dusk. I am not sure.

Q. You have already testified to the transaction that took place between yourself and Mr. Parker when you sold Mr. Parker your option, that took place in The Dalles? A. Yes.

Q. Were you in The Dalles alone, or with your wife, or what was the situation just at that time?

A. Well, my wife was not feeling very well then, and I was out looking for timber, and most of the time quite often she stayed with her folks in Wilamina, and that evening, as I remember, I don't believe she was there. I am pretty sure that she was not there.

Q. Would you tell us what understanding you had with Mr. Parker regarding your future dealings with this property?

A. You mean what was said about it that evening?

Q. Yes, what was said or what your understanding was, if you can tell us what was said.

A. Well, all I know was that the future dealings with it, that [1610] he was to give me \$25,000 for my—for the option, for signing of it, and that I would sign the option to him, and, oh, I was to pay the other \$4,000 on the option, which I felt was still part of the option, and that same evening I think he left, and then he come back again that evening and wanted me to take a cruiser up there and show him this property, and I believe, at that time, or

(Testimony of Walter Stegmann.)

it may have been before, that he wanted me to survey out this reserved area. There was a reserved area on this option that the Winans family were wanting to keep for themselves. He wanted me to see that it was surveyed out.

Q. That understanding, was that understanding regarding a survey reached that night?

A. I am not sure. I believe it was because he wanted me to go up there and show, when he came back to show this cruiser, which was Mr. Kenny, the corner and establish him on the property.

Q. Was it your understanding that night that you had sold Mr. Parker your option?

A. On what night?

Q. The night of the 13th? A. Yes.

Q. Now, between the night of the 13th and the night of August 18th, did you have reason to see Mr. Winans regarding this property, or can you remember?

A. You mean between what dates was that?

Q. That would be the Monday night at which you purchased the [1611] option—or Mr. Parker purchased the option from you, and August 18th.

A. I don't believe I seen Mr. Paul Winans in between the 11th, but on the 13th—or not the 13th—but the 18th was the day that I seen him.

Q. That is right. I mean, you did see him on the 18th, of course? A. Yes.

Q. Did you take Mr. Kenny up there on the 14th, Mr. Roy Kenny who testified?

A. Well, I am not just sure that it was the 14th

(Testimony of Walter Stegmann.)

or the 15th. I am not positive of the date, but it was one day in, you might say, the first part of the week.

Q. Did you show him a quarter corner, or what did you show him?

A. I took him up on the property, and I showed him the quarter corner, and I showed him approximately where I had went, and I think we probably talked about the nice appearance of the timber and all.

Q. You have testified to activities on August 18th in regards to this property, and you have heard your brother's testimony with regard to it. Would you tell us again who was up there on the 18th?

A. On the 18th, yes. My brother Carl, Paul Winans, and he had two surveyors there, I think one Bogar and a Mr. Haynes were up there, and I don't know whether there was anyone else [1612] there. There may have been, and Ross Winans may have been, but I am not sure that day. Yes, I believe he was there.

Q. Did you meet Mr. Winans on the property, or did you meet him at his place; do you know?

A. I met him at his place, and then he went—either he went up with me—I am sure he went up with me in my car and my brother to the property.

Q. Now, you have testified on a good part of this before. Did you at any time on that day, and at what time did you, if you did, did you discuss

(Testimony of Walter Stegmann.)

with Mr. Winans the fact that Mr. Chet Parker had now purchased your option?

A. Yes, I am sure that I told him in the morning as we were going up, either on the road to the property or it may have been walking in on the property down the trail that we reached going down, the Government trail around the lake there until we reached the property, that I mentioned to him that I had sold my option to Chet Parker on the property.

The Court: What day was that?

Mr. Ryan: This was on August 18th, your Honor. At least that was in response to the question.

Q. At the time you told this to Mr. Winans, do you know whether anybody else was present?

A. Well, I don't know. It seems like the surveyors, they gathered up their equipment and were taking off down the trail, and I believe we were a little bit behind them, and I believe just [1613] Mr. Winans and me were talking. Possibly my brother may have been following along behind, but I believe the two surveyors had already went down the trail ahead of us.

Q. Did you spend a good portion of the day up there on the premises?

A. Well, it seems like we spent practically all day up on the premises, yes.

Q. Was there any discussion regarding school lands between yourself and Mr. Parker — Mr. Winans, rather?

(Testimony of Walter Stegmann.)

A. I think it may have come up between Mr. Winans and I that it had been, Section 16 was a school section, had been a school land, and that possibly he might have mentioned that his father had bought it a long time time ago, but that was about the extent of it.

Q. Well, now, you are speaking of what he possibly might have said up here on the Lost Lake property on August 18th when you were there surveying; is that what you are referring to?

A. Yes.

Q. Do you remember whether he did mention school lands or not?

A. Well, he might have mentioned that it was—no, I just don't remember. It could have been that he did mention it was school lands, but——

Q. You heard the testimony of Mr. Haynes here that the property—that he was of the impression or that he recalled that there was some discussion regarding the title to this property and just [1614] precisely—I cannot repeat his exact words, but do you recall any such discussions that you overheard here in the case between Mr. Haynes and yourself or between yourself and Mr. Winans when Mr. Haynes was present?

A. I don't remember such conversation. The fact is, I don't think we were together very little, if any. Mr. Haynes was running his surveying apparatus and transit, and I was sometimes handling the tape, and Mr. Winans was out ahead slashing brush, and I don't recall. If any was, it

(Testimony of Walter Stegmann.)

might have been that his father had purchased it a long time ago, and this was a school section, Section 16.

Q. You can tell us whether anything was said to you regarding a defect in the title, can't you?

A. No, there wasn't any.

Q. You mean you cannot tell us?

A. There wasn't any discussion that I heard.

Q. Now, on this previous testimony as brought out here that you people were up there right until evening on the 18th of August——

A. It must have been probably close to four or five, I don't know, something like that, around five o'clock.

Q. Then you returned down to the gas station near Dee, Oregon?

A. Yes, we went back to his little office there at Dee, or it is across from his place there.

Q. Did the surveyors come down with you, or did they come down [1615] in a separate vehicle?

A. They drove up in a separate car, and they drove their own car back that evening.

Q. Did Carl Stegmann come down with you?

A. Yes, he come down. We, I am sure it was him, Carl Stegmann, Paul Winans, and myself that drove down in his car, and the surveyors, they come down in their other car ahead of us or just following us.

Q. You say you are sure it was him, Carl Stegmann, yourself and some other party?

A. I meant him, I meant Carl Stegmann. I said

(Testimony of Walter Stegmann.)

“him” first. I meant Carl Stegmann, Paul Winans and myself were in this car that we drove back from Lost Lake to Paul Winans’ place.

Q. Would you tell us what took place at Paul Winans’ gas station there in Dee?

A. Well, yes, there was—the two surveyors, they wanted to hurry and leave and get back to Portland and they were doing some figuring there. They were figuring outside, I think on their car, and kind of comparing. Well, they had a few notes they were figuring and comparing, a few notes. They were figuring up the time or the hours they worked there, and Mr. Paul Winans was preparing to pay them off so that they could get started towards Portland, and I think he said that he had finished typing up a piece of paper before him and I could get on with our business and that he paid the surveyors off and they [1616] left.

Q. Had you discussed with Mr. Winans the signing of anything or that any paper was going to be drawn up before this?

A. Well, they was supposed to be an additional payment of \$4,000 on the option, and that was what I was going to pay him for, and there had to be an extension of time, too. He wanted an extension of time to survey out this reserved area because it had not been surveyed out, as I think, and seven days was supposed to be the period that it was supposed to be surveyed out and staked off, and it had not been, so he wanted additional time to stake it out.

(Testimony of Walter Stegmann.)

Q. When he paid off the surveyors, where did he pay them off; do you remember?

A. I don't—he paid them off at his office there. I think he drew up a check, or he may have had it in his pocket, but I think the surveyors were outside and he may have went in his office to write a check. I am not sure, but he paid them off outside and they left.

Q. Where was Carl Stegmann at this time?

A. Well, I am not quite sure. I think he was, could have been talking to them or just walking around outside or at that time I think he was probably talking to one of the surveyors. Then when he paid them off they left.

Q. Did Mr. Chet L. Parker show up that evening?

A. Yes, he showed up there just about the time, I believe that— [1617] it was a little while after, I believe, the surveyors had left and Paul Winans was typing up that election to purchase and the extension of time for setting up this reserved area, and Mr. Parker come up there.

Mr. Ryan: There is one of the exhibits, Plaintiff's Exhibit listed as 1-B. I don't believe it has been admitted. It is available?

Mr. Buell: I think that is just a copy. I think the original——

Q. (By Mr. Ryan): In order to go forward with this, would you hand this to Mr. Stegmann, please?

(Document handed to witness.)

(Testimony of Walter Stegmann.)

Q. At the time this was being typed out, had Mr. Parker come there, before the typing of the document, the Election to Purchase, had been typed out; do you remember?

A. Well, I don't remember exactly, but he might have come just about the time it was finished. I don't know, or I think he come after it was finished, typed out.

Q. Now, you have testified on your deposition that you did not think that you signed any papers there. Can you remember how many papers were typed out?

A. Well, I think there was two or three copies of this piece of paper here and—but I am not sure, it seems like there was two or three copies.

Q. What is your testimony now? Do you think that you may have [1618] signed that document that is in front of you?

A. Well, it looks like my signature, but I didn't think I signed it, and I may have where there was so many—there were several copies there. It is possible, but I—I may have signed it, but I know I signed the extension for setting out the reserved area. I remember that clearly, signing it, because I was supposed to survey out this reserved area, and I could agree on the extension of time getting it staked out because it had not been accomplished.

Q. Can you recall any conversation regarding Mr. Parker's interest in the option when this question of the Election to Purchase was offered to you?

(Testimony of Walter Stegmann.)

A. Well, I remember telling—what was that question again?

Q. Do you have any memory of any conversation regarding Mr. Parker's interest in the option at this time you have spoken about earlier in the——

A. I had spoken about it earlier, and I am sure I mentioned it at the time he was typing this up, and I didn't really think it was necessary for me to sign it. I thought it might have been part of the option, but I agreed on the extension of time, and I think it might have been that time that Mr. Parker come in and it was explained—Mr. Parker was introduced, or he introduced himself, and he could see no reason for signing it, and that him and Mr. Winans were dealing from then on. That was the understanding. [1619]

Q. Who said that?

A. Mr. Parker and Mr. Winans were dealing from then on.

Q. No, but I mean, were those words used?

A. What?

Q. Mr. Parker and Mr. Winans were dealing from then on, did Mr. Parker say that to Mr. Winans, or did you say that, or how——

A. Well, I told Mr. Winans that I had sold my option to Mr. Parker; that him and Mr. Parker were then dealing. Then I think probably when Mr. Parker come in there and was introduced or introduced himself that I said, "This Mr. Parker is the one that bought the option, and you and him are

(Testimony of Walter Stegmann.)

dealing from now on.” I mean, I am not sure that that is the words, but I think——

Q. Then it is your testimony that you cannot remember whether you signed the document or not; is that correct?

A. No, I can’t remember. I mean, the signature looks like it is my signature.

Q. You do believe it is your signature?

A. I believe it is, but I can’t remember signing it.

Q. That you remembered?

A. I may have—undoubtedly those papers were there and just signed it. I don’t know.

Q. I would like to have this handed to Mr. Stegmann for identification. That is a photostatic copy, unsigned, Mr. Stegmann.

A. I see it is. [1620]

Q. Does that refresh your memory at all? That is a photostatic copy of the Notice of Election and acknowledgment of notice—Notice of Election and Extension of Time.

A. Yes, I remember paying him the money, the \$4,000, and signing this Extension of Time to set out this reserved area, and it is possible that these papers were here, signing it—I might have just signed this unknowingly, that I was sure that I had not signed it.

Q. Well, the document to which you are referring, do you know where the original of that is?

A. This photostatic copy?

Q. Yes.

(Testimony of Walter Stegmann.)

A. Well, I don't remember, I don't know exactly. I think that this is a copy of the one that I got that evening, or whether I got it or whether it was give to Mr. Parker when he had arrived there, I am not sure of it, but I have never been able to identify it.

Q. Did you retain your own copy, or did it go to Mr. Parker; do you remember that?

A. Well, it went to Mr. Parker.

Q. Did you stay there on August 18th? Did you leave with Mr. Parker or did you leave prior to Mr. Parker?

A. Well, I couldn't rightly say whether I left—everybody left, I think, about the same time. I mean, everybody meaning that Mr. Parker and my brother and I might have left, went out [1621] of the office about the same time. I am not sure, but I know that my brother and I together left from Paul Winans' shortly after I had paid him that \$4,000 and agreed on an extension of time.

Q. Was there any discussion in your presence at this time in Paul Winans' office during the transaction you have just described regarding a defect in the title or anything regarding that at all?

A. You say any defect in the title?

Q. Yes, was there any discussion regarding anything wrong with the title?

A. There was never any discussion regarding anything wrong with the title. I think if there was any discussion on that evening of the 18th it was that Mr. Winans attempted to look for his title

(Testimony of Walter Stegmann.)

policy and was going to show Mr. Parker that he had a title policy and that his sister had the deed to the property, and I think that was—I remember at one time that he had looked for the title policy. The fact is, two times he looked for the title policy.

Q. On that day?

A. No, on that one day, that day, and on the 11th when he give me the option he looked for the title policy.

Q. Is that the extent of your recollection of what took place there, that you have given to us?

A. I believe it is. [1622]

Q. With regard to the title? A. Yes.

Q. Now, when was your next occasion, Mr. Stegmann, to contact Mr. Winans?

A. Well, I don't remember. It seemed like it was, yes, it was another time that he had surveyors up there again. He wanted them to help survey off this reserved area, but I don't remember the date that it was, but I think that it might have been on the 20th or 21st or 26th, something like that, of August.

Q. He had surveyors up on that area itself?

A. Yes, he had a couple of surveyors up on the Lost Lake area, that property up there.

Q. Do you know their names?

A. One was a Mr. Haynes, and another man was up there. I think they were—I believe they were there two days, but there was one day that I am sure I was not there. I think I was there on the last day they were there, was on a Sunday.

(Testimony of Walter Stegmann.)

Q. On that occasion, was there any discussion regarding the title to the property? What were you doing up there on the premises?

A. Well, I was trying to help establish this reserved area, to get the reserved area set out there as it was supposed to be in the option in the first place, and here all this time had gone by and it still had not been set out.

Q. Now, there is testimony that when you were up—there is [1623] testimony that you were up on Lost Lake on, I believe, the 28th of August, at Lost Lake, on the 28th of August, and on an occasion when you and Mr. Parker and his son, Myron, went up there on that occasion.

A. What was that?

Q. Do you recall an occasion when you went up with Mr. Parker on the property?

A. I don't recall the exact day, but it was after these two surveyors from Portland had been up there. I mean, it was after they had been up there. I think it might have been on the 28th or 29th. I am not sure of the exact day that Mr. Parker and his son and myself went up there and surveyed on this reserved area.

Q. Did you see Mr. Winans that day at all?

A. Yes.

Q. What took place, and where did that take place, your meeting with Mr. Winans?

A. Well, he was supposed to go along, I think, to survey out this reserved area, and we stopped

(Testimony of Walter Stegmann.)

there to see if he wanted to go along and was prepared to go along, and we—I mean, I and Mr. Parker and Myron Parker were there, and he had other work to do, it seemed like, that he couldn't go up there. He wanted to go, but he had these other things to attend to, and he didn't go.

Q. Were you up on the premises for some time that day, or do [1624] you remember?

A. Well, I think it was probably the biggest share of the day.

Q. Did you see Mr. Winans further that day, or was that——

A. Well, we seen him first that day, and I don't know as we stopped. It was getting about dusk, I believe it was, or it was in the afternoon, and I don't remember stopping at his place going back.

Q. Now, on August 31st, on the day where there has been some testimony here that you and Mr. Winans and Ross Winans and Chet Parker and Myron Parker were on the Lost Lake area premises, do you recall that day?

A. You mean when Chet Parker and Myron Parker and Paul Winans and Ross Winans and myself were up there?

Q. Yes.

A. You say that was the 31st of August?

Q. Yes, according to the testimony.

A. I don't know the exact date, but I am sure, though, that that was the exact day when the reserved area was finished, and that we went up there to agree on the reserved property and set stakes

(Testimony of Walter Stegmann.)

out and mark the trees and to conclude this reserved area.

Q. Do you recall overhearing any conversations or being present at any conversations between Paul Winans and Chet Parker on that day?

A. Well, I don't—I wasn't present, I don't believe, at any [1625] conversation, only that surveying these lines, why, maybe I would be, pass by him, or walking along the trails, you know, this line, why, I might pass by him, or everybody seemed to be doing a little bit of helping in the surveying, and that I remember the one time when I was close by they were having a discussion, a heated discussion there in the trail. They were—I don't know whether they were arriving at the volume or acreage or what they were discussing, but they seemed to be having quite a discussion there.

Q. With respect to the reserved area, were you being consulted by Mr. Winans as to the parts to be reserved in that survey?

A. How did you mean that exactly?

Q. Mr. Winans, when you would be running a line attempting to determine just what area would be reserved, was Mr. Winans dealing with you?

A. Dealing with me?

Q. Yes, was he talking with you about it?

A. No, he wasn't dealing with me, but sometimes he may have mentioned when I was running the lines, which it was my job to do, run the lines, and he was wondering if we went up a little farther with the line what it would look like, and we had

(Testimony of Walter Stegmann.)

quite a time deciding. I couldn't tell where they wanted to go. I would survey up one line, and then it seemed like him and Mr. Parker would change their mind, and then I would come back and we would start over on another angle. [1626]

Q. You said he and Mr. Parker would change their minds? A. Well, it seemed like it.

Q. Were Mr. Parker and Mr. Winans consulting together to reach a decision regarding the reserved area?

A. They had been doing quite a bit of talking. What they were talking about I wasn't able to hear.

Q. Why would you say they changed their minds?

A. Well, I guess they changed their minds because I surveyed a little ways, would measure up, and we would set some stakes, and then we would come back and change it, so evidently it was not right, because I had to do it over again.

Q. At the conclusion of this day, had the reserved area been staked out?

A. At the end of this day, yes, they finally agreed on a reserved area there where—it was staked out.

Q. Was there any discussion in your presence to yourself or by anyone else, by Mr. Paul Winans regarding the state of the title to this property?

A. Well, I didn't hear any discussion on it at all. I mean regarding the state of the title.

The Court: Have you finished the 31st of August?

(Testimony of Walter Stegmann.)

Mr. Ryan: I think I have, yes.

The Court: We will take a recess.

(Recess taken.)

WALTER STEGMANN

recalled, testified as follows: [1627]

Direct Examination

(Continued)

By Mr. Ryan:

Q. At the end of your work on the 31st, what further arrangements were made, Mr. Stegmann, with regard to your part in working out the survey of the reserved area?

A. You mean what was I supposed to do yet?

Q. What were you supposed to do next?

A. Well, as I was supposed to survey out and set out the reserved area to see that it was—lines were there right, why, I was supposed to—whenever Winans was ready to have the deed written up, why—when these descriptions could be put into the deed properly, why, I was supposed to go up and see that the lines of this reserved area were put properly in the deed.

Q. What were the arrangements regarding that? When were you to do that?

A. Well, I was supposed to keep in contact with Mr. Winans, I guess it was, or whenever he had time, at his convenience, to go up and help arrange

(Testimony of Walter Stegmann.)

this reserved area and see that the lines were set down properly.

Q. When was the next time you got together with him for that purpose?

A. I believe it was on, it was on a Saturday. It was in September, I think that would be—was at—I think September 8th, I believe it was.

Q. Is that Saturday, September 8th, that you mentioned here in [1628] the previous testimony?

A. Yes.

Q. Where did you meet Mr. Winans that day, at Vawter Parker's office?

A. No, I think I met him, I was supposed to meet him at a service station or something, I believe it was, or downtown. I forget just where it was I was supposed to meet him.

Q. Did you go to Vawter Parker's office from there?

A. I don't believe we went to Vawter Parker's office first. I think he made arrangements to have Mr. Haynes come up from Portland and help work out this description, and I believe that we went to the surveyor's office at first in Hood River there.

Q. Did you work there, or did you just go there?

A. Well, we went there. Mr. Haynes and Mr. Winans and myself went there, and Mr. Haynes and I started working out this reserved area, and there had been a map drew up on it, and I believe Mr. Parker from the notes I had given him had had a map drawn up on it, I think.

Q. Who had that map in their possession?

(Testimony of Walter Stegmann.)

A. I think I had the map, I believe. I am not sure whether we may have just roughly sketched out one to figure out the reserved area, but anyway we had made a rough sketch before to figure out the amount of acres actually involved in this reserved area there, and it seems like Mr. Parker said there was an arrangement there that if he wanted some more land in this reserved [1629] area, why, he could go ahead and have some more land as long as it didn't take in any timber to amount to anything, just as long as it was confined to the swamp area there.

Q. You are speaking about having a map at the time you were at the surveyor's office?

A. Yes.

Q. Do you know whether you had that map, Mr. Winans had a map, or Mr. Haynes had that map of the three people there?

A. I couldn't rightly say just who had the map, but it seems like there was one map there, and whether I had it, or whether Mr. Winans had it, I am not positive of that.

Q. Did you and Mr. Haynes have quite a bit more work to do?

A. Yes, seems like Mr. Winans was not exactly satisfied with my work. I mean, whether he was satisfied or not, he wanted Mr. Haynes up there to check it, and I just gathered the reason he was there, and we went together and was working out this, trying to figure out how to set it down briefly, get it—I mean, small enough so that you could put

(Testimony of Walter Stegmann.)

it in a deed with a description that wasn't so lengthy, and we were working on that, too.

Q. Were you following the lines on a map in order to guide yourself in writing out the description?

A. Yes, we were following the lines on a map, and I think we sketched probably another, even made another rough sketch, but I don't remember exactly. [1630]

Q. You say Mr. Winans was unhappy. Was there any discussion or dispute that took place there at the engineer's office?

A. Well, no, there was—we had not arrived at any—I mean just how to word it, set it down. We knew how the lines were to run, all right, but it was kind of a problem working it out so the wording was all right, and he wanted Haynes to check and see that he was getting enough acreage, or something there.

Q. Was Mr. Haynes working it out in figures?

A. Yes, he did some figuring there on the acreage, too.

Q. Were you concentrating on that problem, too?

A. I was concentrating on it, too. We were both concentrating on it there. I mean, working out this problem.

Q. It wasn't just a mechanical task, then. It was consuming both your time and attention; is that correct?

A. Yes, it was.

Q. Well, now, did you stay at the engineer's office very long or——

(Testimony of Walter Stegmann.)

A. We were there quite a while. I can't really say how long. It seems like, I know one thing, that he had to go back, Mr. Winans did. It seems like he had to go back to take his children or get his children and take them to a doctor or something and that Mr. Haynes and I was there, and then I believe he come back before we had even got the thing completed.

Q. That is, while you were there still at the——

A. We were still at the engineer's office, and whether they [1631] close on Saturday afternoon or not I am not sure, but I knew the engineer was gone and that Mr. Haynes or I, I believe it was, when Mr. Winans knocked on the door, had to go let him in so it must have been after dinner that we were still there working in the office because there was no one else around there and the doors was locked.

Q. Had you been out for dinner or your lunch?

A. I don't know whether I went out for a sandwich. I may have, and I think there was someone in the office all the time because we had no key there, and I don't think there was——

Q. Did you go to Vawter Parker's office from there?

A. Well, after that we went to Vawter Parker's office, and I know we went there, and I don't think we had been to Vawter Parker's office before that. We may have been there briefly and then went over to the engineer's office.

(Testimony of Walter Stegmann.)

Q. Had you ever met Vawter Parker before?

A. Not before that day, no.

Q. How did you introduce yourself in Vawter Parker's office? Was his secretary in there when you got in there?

A. I don't know whether—it seems like there was a girl there doing some work or picking up some papers, but I don't remember exactly.

Q. Did you go there in company with Mr. Winans or Mr. Haynes?

A. I went there in company with Mr. Winans and Mr. Haynes.

Q. What happened then? What took place in the office? Did [1632] you continue to work?

A. Well, yes, we continued to work on this description. It seems like we had—Mr. Haynes and I had kind of agreed on and wrote it down. I don't remember whether he typed it out in the engineer's office or whether he wrote it down in pencil, but still Vawter Parker seemed to think that some of the wording was wrong in it and wanted to change it and that it was not quite right, and we were doing quite a bit of work there on it.

Q. Did you object to the changes?

A. Well, some of it I did not agree with him on the changes because—

Q. Why didn't you agree with him?

A. Well, it was the way I had set it out, and I didn't quite—it didn't sound like it was right. He wanted, for one thing, as I remember distinctly, there, we had approximate distances between our

(Testimony of Walter Stegmann.)

stakes that I had set down there, like a hundred feet to another stake, was approximately a hundred feet, and to be exact, why, you have to be very sure of your measuring to be exact so I was not very certain of my surveying that I could be exact so I didn't want him to put exactly so many feet from one stake to the other, and it seemed like then there was—when he wanted to set down the line, the center line running through the center of the property, why, it seemed like there was something about that, I don't remember, but it didn't agree with me anyhow, the lines either run around the property or around [1633] the reserved area.

Q. What was the working arrangement? Did he then tell you and Mr. Haynes to go back and work it out again?

A. I don't remember whether we went back to the surveyor's office again, but he had a couple rooms there in Vawter Parker's office, and at a time or two there we were in his office while Mr. Parker, Vawter Parker, was taking care of some other people he had in there, and Haynes and I was, and I think quite often Mr. Winans was in there discussing this thing, too, and trying to arrive at a simple way to put the description in the—we had a lot of pieces of paper with descriptions on and nothing really simplified.

Q. These pieces of paper with descriptions on, were they deeds, or were they just descriptions that you were working on?

A. As I remember, they was just descriptions

(Testimony of Walter Stegmann.)

mostly, but I think at one time he—or maybe more than several times, I guess it was that he—we thought that we had arrived at a description, a simple description, and he started to write it down in the deed or the kind of paper, I think, you would probably write it in the deed, and then when it would come back, why, either the girl made a mistake on it in copying some of the pieces right, or during the meantime, while it was getting typed up, why, we might have thought to change it one way or the other.

Q. What office were you and Mr. Haynes working in most of [1634] the time?

A. Well, sometimes I believe we had the reception room there in his office, and another one, I am not sure, but sometimes we were in a different office than where Vawter Parker and his——

Q. Were you and Mr. Haynes required to move from one office to another in order to permit Mr. Vawter Parker to go ahead with his work?

A. Well, sometimes we would pick up our pieces of paper and go around the table there. I believe he had a desk or something he was not using so much in the other room, and we used it, I believe it was.

Q. Did they reach any final draft of this description that night? This is Saturday, the 8th.

A. They may have reached the final—no, I am sure they didn't because they had arrived at kind of a simple description, but I had to go back there Monday and we worked all Monday on it, so it was

(Testimony of Walter Stegmann.)

almost all Monday so I am sure it was not arrived at a deed and put in deed form on Saturday.

Q. Now, during the course of the day on Saturday, the 8th, Mr. Paul Winans, in Mr. Vawter Parker's office, did he discuss with you a claim of the United States Government to this property?

A. Well, he never discussed with me. If he was discussing it, I never heard it unless he was discussing it with Vawter Parker.

Q. Did he discuss it with you personally?

A. No. [1635]

Q. Did you overhear him discussing it?

A. No, I never heard it.

Q. Would you hand to Mr. Stegmann Exhibit 311, please?

(Exhibit presented to witness.)

Do you recognize that from having seen that previously during the trial?

A. I remember seeing this before, yes, in the trial here.

Q. You have seen it in my office. Had you seen it before you saw it in my office?

A. No, I had not, to my knowledge.

Q. On any time on September 8th, did Mr. Winans show you that paper and ask you to sign it?

A. Not that I recall, because I don't remember ever seeing that, but I had seen so many papers, descriptions and these deeds, but I don't remember ever seeing this.

Q. Well, do you remember Mr. Winans asking

(Testimony of Walter Stegmann.)

you to sign a paper of any type regarding a claim of the United States Government to that property?

A. No, I don't remember him doing that.

Q. Did Mr. Winans ask you that? A. No.

Q. Did such a subject ever come up in your presence when you heard it when Mr. Haynes was present?

A. Well, now, I don't know. I mean, as I never did hear it discussed because we were working on this description. [1636]

Q. That is my question. In your presence, when Mr. Haynes was present, did Mr. Winans ever say anything to you regarding this or to Mr. Haynes regarding this, that you heard?

A. I never did hear it.

Q. Did Mr. Vawter Parker offer such an instrument to you for signature? A. No.

Q. Did Mr. Vawter Parker, on September 8th, Saturday, say in your presence anything regarding the title to this property?

A. Well, he could have discussed it with Paul Winans in my presence, but I never did hear him discuss anything like that.

Q. My question is, did he say anything to you?

A. No.

Q. Did you hear anything regarding this?

A. Not that I remember. I didn't hear any discussion.

Q. Now, when you left on September 8th, did you take any papers with you?

A. On September 8th?